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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

O.C.G.,

Petitioner,

v.

Fred Figueroa, et al.,

Respondents.

No. 2:25-cv-03048-SHD-DMF

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO MOTION FOR INJUNCTIVE RELIEF

In this immigration habeas action, Petitioner seeks his release from detention by arguing that his detention is unconstitutionally prolonged, and that the government wishes to remove him to an unknown country without due process. The government, however, *is* providing Petitioner with due process prior to a determination of whether it may remove him to Mexico and currently has no plans to remove Petitioner to any other country. Indeed, the government has moved to reopen Petitioner's removal proceedings before an Immigration Judge (IJ) and will schedule a hearing to provide Petitioner an opportunity to be fully heard on any and all claims of relief from removal to Mexico. Because an IJ will make a determination on Petitioner's relief claims at a finite point in time, Petitioner's detention during this process is not indefinite as contemplated by the Supreme Court in *Zadvydas v. Davis.*

Petitioner's arguments also rely heavily on the assumption that the government intends to remove him to an unknown "third" country, i.e., neither Guatemala nor Mexico. This

assumption is incorrect. The government intends to remove Petitioner to Mexico if and when the IJ.so orders. Petitioner's continued detention while the IJ considers his claims of relief from removal to Mexico is lawful and constitutionally permissible. There is no legal basis for a writ of habeas corpus to issue.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner, a 31-year-old citizen of Guatemala, entered the United States on March 27, 2024, near Santa Teresa, New Mexico. Sealed Exhibit 1, Declaration of Ema Peru, ¶ 6. United States Border Patrol agents arrested him and issued a Notice and Order of Expedited Removal, pursuant to the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1182(a)(7)(A)(i)(I). Sealed Exhibit 1, ¶ 6. Immigration and Customs Enforcement ("ICE") officers removed him to Guatemala through air charter operations on April 2, 2024. Sealed Exhibit 1, ¶ 7.

Petitioner alleges that he then crossed from Guatemala into Mexico, was kidnapped and raped in Mexico, and eventually crossed the United States border for a second time. Doc. 2 at 3-4. The government believes that Petitioner specifically reentered the United States on May 5, 2024, near Sasabe, Arizona. Sealed Exhibit 1, ¶ 8. Border Patrol again arrested him and issued a Notice of Intent/Decision to Reinstate Prior Order, charging him with violation of 8 U.S.C. § 1231(a)(5).[1] Border Patrol transported Petitioner to the Eloy Detention Center in Arizona, at which point ICE resumed custody of his person. Sealed Exhibit 1, ¶ 9. ICE requested Petitioner's removal documents from the National Records Center on May 13, 2024. Sealed Exhibit 1, ¶ 10. On May 30, 2024, ICE referred his case to an Asylum Pre-Screening Officer for a reasonable fear interview. Sealed Exhibit 1, ¶ 11. On June 11, 2024, the Asylum Officer determined that Petitioner had established a reasonable fear of persecution or torture and issued a Notice of Referral to Immigration Judge. Sealed Exhibit 1, ¶ 12. On February 19,

[1] "If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry."

2025, an IJ granted Petitioner withholding of removal to Guatemala. Sealed Exhibit 1, ¶ 13. ICE removed Petitioner to Mexico on February 21, 2025. Sealed Exhibit 1, ¶ 14.

On March 23, 2025, Petitioner as a named party-plaintiff filed suit in a Massachusetts federal district court. *D.V.D. v. U.S. Dept. of Homeland Security*, No. 1:25-cv-10676, Dkt. 1 (D. Mass. March 23, 2025). The *D.V.D.* lawsuit was filed as a class action and the Massachusetts federal court certified it as such. *D.V.D. v. U.S. Dept. of Homeland Security*, 778 F. Supp. 3d 355 (D. Mass. 2025). Petitioner here, however, is not merely a member of the certified class in *D.V.D.* He is one of the four named plaintiffs in the complaint. *Id.* at 369 ("Plaintiff O.C.G. is a native of Guatemala…"). In its ruling dated April 18, 2025, the *D.V.D.* court ruled that:

> … prior to removing any alien to a third country, *i.e.*, any country not explicitly provided for on the alien's order of removal, [the government] must: (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections; (3) move to reopen the proceedings if the alien demonstrates "reasonable fear"; and (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal.

Id. at 392-93.

Following this order, ICE returned Petitioner to the United States, paroled him into United States and resumed custody of him on June 5, 2025, and transported him to the Eloy Detention Center. Sealed Exhibit 1, ¶ 15. On June 9, 2025, Petitioner expressed fear of removal to Mexico. Sealed Exhibit 1, ¶ 16. ICE referred Petitioner to an Asylum Officer. Sealed Exhibit 1, ¶ 16. The Asylum Officer determined that Petitioner had a reasonable fear of persecution or torture in Mexico. Sealed Exhibit 1, ¶ 17. An IJ has not yet ruled on that Asylum Officer's determination, however. As such, ICE's Office of the Principal Legal Advisor filed a motion to reopen Petitioner's case so that an IJ can hear Petitioner's arguments as to why the government should not remove him to Mexico. Sealed Exhibit 1, ¶ 18; Sealed Exhibit 2, Motion to Reopen. That motion is currently pending as of this filing.

LAW AND ARGUMENT

A. Standard of Review.

Petitioner has styled his motion for injunctive relief as seeking both a preliminary injunction and a temporary restraining order ("TRO"). A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren,* 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.,* 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result" but is instead an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken v. Holder,* 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States,* 272 U.S. 658, 672 (1926)).

The standard for analyzing a motion for a TRO is the same as for a preliminary injunction. *Babaria v. Blinken*, 87 F.4th 963, 976 (9th Cir. 2023) (describing the two standards as "substantially identical").

B. Statutory Framework.

A noncitizen "may not [be] remove[d] to a country if" he can demonstrate a well-founded fear of persecution if he is returned to such country. 8 U.S.C. § 1231(b)(3)(A). "The burden of proof is on the applicant . . . to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). Any person who has been (1) ordered removed, and (2) found to be entitled to protection under the Convention Against Torture ("CAT") "shall be granted deferral of removal to the country where he or she is more likely than not to be tortured." *Id.* § 1208.17(a). Such CAT relief does *not* "alter the authority of the Service to detain an alien whose removal has been deferred under this section and who is otherwise subject to detention." *Id.* § 1208.17(c).

If a noncitizen is granted withholding of removal or CAT relief, he or she still may be removed to a country where the "government [] will accept the alien into the country's territory." *Id.* § 1231(b)(1)(C). The decision to remove such a person to another country other than his native-born country is within the discretion of the Secretary of the Department of Homeland Security ("DHS"). *See* 8 C.F.R. § 241.15. A noncitizen "may not [be] remove[d] [] to a country if" he can demonstrate a well-founded fear of persecution if he is returned to such country. 8 U.S.C. § 1231(b)(3)(A).

C. Standard Governing Detention of Aliens Ordered Removed.

The detention, release, and removal of noncitizens subject to a final order of removal is governed by § 241 of the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney General has 90 days to remove a noncitizen from the United States after an order of removal becomes final. During this "removal period," detention of the noncitizen is mandatory. *Id.* After the 90-day period, if the noncitizen has not been removed and remains in the United States, his detention may be continued, or he may be released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3) and (a)(6). ICE may detain a noncitizen for a "reasonable time" necessary to effectuate his removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable period of detention for noncitizens, like Petitioner, who are detained under section 1231(a). *See Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the noncitizen to show, after a detention period of six months, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the noncitizen makes that showing, the Government must then introduce evidence to refute that assertion to keep the noncitizen in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The court must "ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic

purpose, namely, assuring the noncitizen's presence at the moment of removal. *Zadvydas*, 533 U.S. at 699.

D. Petitioner is Impermissibly Arguing the Same Issue here and in Massachusetts.

Petitioner is now a named plaintiff in two pending, active cases asserting his legal rights in relation to his immigration status. The government does not contend that *every* argument Petitioner raises here is also before the Massachusetts federal court, but to the extent any argument is, this Court should decline to entertain it. In his Massachusetts action, Petitioner through counsel has argued that the government cannot remove him to Mexico without providing him with notice and an opportunity to be heard on his fears of persecution in Mexico. The *D.V.D.* court heard those arguments and has now ruled on them in its order dated April 18, 2025. *D.V.D.*, 778 F. Supp. 3d at 392-93. Judge Murphy ordered, more specifically, that the government must provide Petitioner with due process prior to removing him to the country of Mexico. *Id.* In addition to the fact that the government is now providing him with that due process, this issue is already before the *D.V.D.* courts.[2] This Court should therefore decline to again litigate that overlapping issue here or at least stay any proceedings seeking to do so. *See, generally, 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).

In a similar scenario before a California federal court, the court dismissed the duplicative individual claim without prejudice. *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). In a class action to which a federal prisoner, Herrera, was a class member, federal prisoners alleged that the Bureau of Prisons had failed to

[2] On July 3, 2025, the Supreme Court stayed the *D.V.D.* court's injunction. *DHS v. D.V.D.*, --- S. Ct. ---, 2025 WL 1832186, at *1 (U.S. July 3, 2025).

take adequate safety measures against COVID-19. *Id.* at *5. In Herrera's habeas case, he similarly alleged that prison conditions created unreasonable COVID-19 risks, such as "contaminated surfaces" and a lack of "social distancing." *Id.* at *3. The *Herrera* court held in the individual, habeas action that Herrera's claims were based, in part, on a duplicative class action and were "not property before the court." *Id.* at *4-6 ("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.").

The court thus dismissed the habeas claims that were based on the related class action. *See id.; see also 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").

The *D.V.D.* court had entered a nationwide preliminary injunction requiring the government to comply with various procedures prior to removing a class member to a third country. The case remains pending. As a both member of the certified class *and* a named plaintiff, Petitioner here 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 his claims that the government provide him with due process prior to removing him to Mexico. The D.V.D. court already ruled on this issue and the Government is currently complying with the court's order by reopening Petitioner's immigration proceedings before the IJ so that Petitioner can be fully heard on his claims for relief from removal to Mexico. To the extent

Petitioner raises these same claims with respect to yet another potential country of removal these claims are subsumed within the issues being actively litigated in *D.V.D.*

E. Petitioner's Detention is Lawful and Constitutionally Permitted.

The Court should dismiss this petition because it fails to make the requisite showing for a *Zadyvdas* claim. In *Zadvydas*, the Supreme Court interpreted the INA's post-removal detention statute, 8 U.S.C. § 1231(a)(6), to mean that once a noncitizen detained for more than six months "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." 533 U.S. at 701. The Supreme Court held that this six-month presumption "of course, does not mean that every alien not removed must be released after six months." *Id.* "To the contrary, 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.*

The government is within the presumptive six month period here. The Border Patrol initially issued a Notice of Expedited Removal to Petitioner on March 27, 2024. Sealed Exhibit 1, ¶ 6. Petitioner was then removed to Guatemala, and traveled to Mexico on his own. It is when ICE paroled Petitioner back into its custody on June 5, 2025, that the Court should begin its calculation of his post-removal detention period for purposes of *Zadvydas*.

Regardless of when Petitioner's detention period began, there can be no *Zadvydas* violation here, however. In *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), the Ninth Circuit provided an example of *Zadvydas*'s "no significant likelihood of removal" standard not applying to a noncitizen who had been detained for longer than six months. The petitioner there was a citizen of Mexico who had been convicted of an aggravated felony, deemed removable for that reason, and detained for three years as of the time of his appeal. *Id.* at 1056. Arguing that this detention period violated *Zadvydas*, the petitioner sought habeas relief claiming that his detention had become "prolonged and definite." *Id.* at 1057. The Ninth Circuit disagreed and affirmed the district court's rejection of habeas relief, holding that the petitioner's removal had "certainly been delayed" albeit by his own pursuit of legal remedies, but that "he is not stuck in a 'removable-but-unremovable limbo,' as the petitioners in

Zadvydas were." *Prieto-Romero*, 534 F.3d at 1063. While the petitioner's detention lacked "a certain end date," the "uncertainty alone does not render his detention indefinite in the sense the Supreme Court found constitutionally problematic in *Zadvydas*." *Prieto-Romero*, 534 F.3d at 1063.

Prieto-Romero is controlling here. Petitioner must demonstrate a reasonable likelihood of *indefinite* detention. This, he cannot do because the government has affirmatively moved to reopen proceedings before an IJ for the sole purpose of allowing Petitioner due process on his claim of fear of removal to Mexico. Sealed Exhibit 2. Moreover, the government filed that motion on August 27, 2025, and Petitioner has provided no supplemented arguments or updates to his briefing to reflect that development. His brief argues that the government may not indefinitely detain Petitioner "as [Respondents] fish for potential countries to accept him" (Doc. 2 at 9), which fails to accurately reflect the fact that the government has moved to reopen proceedings as to Mexico, as opposed to "fishing" for some new country.

Federal courts have similarly declined to find a *Zadvydas* violation when a noncitizen has chosen to exercise his or her legal rights, which thereby prolongs their detention until the pending claims can be heard. In *Diaz-Ortega v. Lund*, for example, the Western District of Louisiana held that there was no *Zadvydas* violation where the Board of Immigration Appeals was still in the process of reviewing arguments by a petitioner, even though her post-removal detention period had surpassed six months. No. 1:19-CV-670-P, 2019 WL 6003485 (W.D. La. Oct. 15, 2019). Similarly, in another Western District of Louisiana decision, the court analyzed a *Zadvydas* argument where the petitioner had delayed his removal by appealing to the Board of Immigration Appeals as follows:

> ... while the presumptively reasonable six-month detention period has indeed expired, Adefemi has not been removed because he filed a motion on January 5, 2006, to reopen his case. On January 24, 2006, shortly after filing his motion, Adefemi received a stay of removal "pending decision on the motion and the adjudication of any properly filed administrative appeal." C.F.R. § 1003.23(b)(iii)(2)(C). Should the Immigration Court reopen Adefemi's immigration case, the order of removal issued against him would no longer be final and the presumptive six-month period under *Zadvydas* would not apply. If the Immigration Court denies Adefemi's request to reopen his proceedings, Adefemi's removal will become reasonably foreseeable because

> it was imminent on January 25, 2006, when the Consulate General of Nigeria issued a travel document for Adefemi's return to Nigeria, and there is no reason to believe that a new travel document could not be obtained within a reasonable period after the stay is lifted.

Adefemi v. Gonzales, No. CIV.A. 05-1861, 2006 WL 2052120, *2 (W.D. La. Mar. 7, 2006).

The Western District of Washington reached the same conclusion in *Singh v. Clark*, No. C06-1803-TSZ, 2007 WL 3046315 (W.D. Wash. Oct. 16, 2007). The petitioner there was subject to removal after the Department of Homeland Security rescinded a grant of asylum to him. *Id.* at *3. The petitioner then moved to reopen his exclusion proceedings before an IJ, was denied, appealed to the Bureau of Immigration Appeals, was denied, and filed a Petition for Review and Motion to Stay Deportation/Removal in the Ninth Circuit Court of Appeals. *Id.* at *3. Because the appellate petition had resulted in a temporary stay of removal, the petitioner argued that his detention had exceeded six months in violation of *Zadvydas*. The district court disagreed and held that the petitioner's removal was "reasonably foreseeable." *Id.* at *4. "Once the Ninth Circuit decides his appeal, ICE will remove or release petitioner," the court found. *Id.* As such, "petitioner has failed to make a threshold showing of indefinite detention." *Id.*

Petitioner here is similarly situated to the petitioners in *Diaz-Ortega*, *Adefemi*, and *Singh*. As in those cases, the government is actively seeking to remove Petitioner and has a plan for doing so. The only reason Petitioner continues to remain in detention is that he wishes to pursue and fully exhaust his legal remedies with respect to an alternative country of removal. While the government had previously removed him to Mexico without allowing for sufficient time to litigate his withholding-from-removal claim as to that country, that legal dispute is now moot and Petitioner does, now, have such time and an opportunity. Since Petitioner cannot show this Court that his detention is indefinite, *Zadvydas* does not apply here.

F. Analysis of *Winter* Factors.

Petitioner has failed to meet his burden under the four factors of *Winter*, 555 U.S. at 22. First, Petitioner is unlikely to succeed on the merits of his claims for the reasons articulated above: his claims previously litigated in *D.V.D.* are not properly before this Court, and his

detention is constitutionally permissible under *Zadvydas*, 533 U.S. at 701. Second, in considering whether Petitioner is likely to suffer an irreparable injury without injunctive relief, the government's declaration establishes here that Petitioner is not under threat of deportation to Mexico or any other country without due process, which eliminates the need for an injunction.

As to the third and fourth *Winter* factors that examine the balance of equities and the public interest, these factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the Court must balance the public's interest in enforcing the United States' immigration laws on one hand, compared to what Petitioner views as the public interest. In his brief, Petitioner points solely to the conclusory notion that unconstitutional conduct by the government weighs in his favor when analyzing the public interest. Doc. 2 at 15-16. But as demonstrated in this brief, the government is not doing so. It is complying with the due process principles explained in *Zadvydas*, because it is providing Petitioner with the opportunity to fully press his arguments about a fear of returning to Mexico in front of an IJ. Petitioner's entire public interest analysis was premised on a finding of unconstitutional actions by ICE, and/or findings of violations of federal immigration statutes. Since the government is proceeding in a constitutional and lawful manner, the public interest factor weighs in favor of the government.

As such, the public interest lies in the Executive's ability to enforce U.S. immigration laws and ensure presence of removable aliens at the moment of removal. *Zadvydas*, 533 U.S. at 699.

CONCLUSION

For the reasons stated, Respondents respectfully request that the Court deny the habeas relief sought by Petitioner, and deny the Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted on September 3, 2025.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Monnathy L. Nambounmy, Petitioner, v. John E. Cantu, et al., Respondents.	No. 2:25-cv-03294-PHX-DJH (ASB) **RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Respondents John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS"); Todd Lyn, Acting Director of ICE; Kristi Noem, Secretary of DHS; and David R. Rivas, Warden, San Luis Regional Detention Center ("Respondents"), by the through undersigned counsel, respond in opposition to Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 8).

I. Factual background.

Petitioner is a citizen of Laos, born there in 1979. Ex. 1, Decl. of Ricardo A. Padilla, at ¶ 4. In 1981, Petitioner was admitted to the United States as a refugee and later adjusted his status to that of a Lawful Permanent Resident. *Id.* at ¶ 5. In 1997, Petitioner was convicted in state court of Attempted Murder in the Second Degree and sentenced to 5 years in prison. *Id.* at ¶ 6. While in state custody, he was issued a Notice to Appear and placed

into removal proceedings. *Id.* at ¶ 7. In August 2001, Petitioner was taken into ICE custody. *Id.* On August 9, 2001, an immigration judge denied Petitioner's application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"), and ordered Petitioner removed to Laos. *Id.* at ¶ 8. Petitioner waived appeal. *Id.* Thus, Petitioner is subject to a final order of removal. *Id.*; *see also* 8 U.S.C. § 110(a)(47) (removal order final when period to seek review by the Board of Immigration Appeals ("BIA") expires); 8 C.F.R. § 1241.1(b) (removal order final upon waiver of appeal to BIA by alien).

Petitioner was released from ICE custody in November 2001 on an order of supervision ("OSUP"). Ex. 1 at ¶ 9. In May 2004, Petitioner was convicted of Burglary in the Second Degree and sentenced to 2 years in prison. *Id.* at ¶ 10. Upon his release from prison in March 2005, Petitioner's OSUP was revoked, and he was returned to ICE custody. *Id.* at ¶ 11. Petitioner was released from ICE custody in June 2005 on an OSUP. *Id.* at ¶ 11. In June 2008, Petitioner was convicted of Burglary in the Second Degree and sentenced to 4 years in prison. *Id.* at ¶ 12. In August 2011, Petitioner was arrested by ICE for violating the terms of his OSUP and booked into ICE custody. *Id.* at ¶ 13. Petitioner was released from ICE custody on an OSUP in April 2012. *Id.* In April 2014, Petitioner was convicted of Burglary in the Second Degree and sentenced to 4 years in prison. *Id.* at ¶ 14. In 2016, ICE placed Petitioner on an OSUP. *Id.* at ¶ 15. On July 3, 2025, Petitioner was enrolled in ICE's Alternatives to Detention ("ATD") program. Doc. 8 at Ex. L. On July 3, 2025, Petitioner submitted a request to ERO to stay his removal. *Id.* at ¶ 16; *but see* Doc. 8 at Ex. L (listing date of application for stay of removal as June 13, 2025). Petitioner's request was denied on July 9, 2025. *Id.* at ¶ 17. On July 30, 2025, Petitioner was terminated from the Alternatives to Detention ("ATD") program and taken into ICE custody. *Id.* at ¶ 18. ERO has submitted a travel document request packet to ERO Headquarters, Removal and International Operations ("RIO") for review. *Id.* at ¶ 19. RIO has not responded to ERO's request for an update on the status of the travel document request packet. *Id.* at ¶¶ 20, 21. That said, ERO has successfully completed removals to Laos in 2025. *Id.* at ¶ 22.

On September 10, 2025, Petitioner filed this habeas action alleging that he is detained in violation of the Fifth Amendment, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.13, and the

Administrative Procedures Act ("APA"). Petitioner also alleges that removal to a third country (e.g. not Laos) would constitute punitive third country banishment in violation of the Fifth and Eighth Amendments. Petitioner also filed a Motion for Temporary Restraining Order asking the Court to order his immediate release from immigration detention, enjoin Respondents from removing him to a third country without reopening his removal proceedings, and enjoin Respondents from removing him to a third country for a punitive purpose and effect. Doc. 8 at 3.

II. Legal framework for preliminary injunctions.

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. Argument.

A. Petitioner is not likely to succeed on all of his claims.

1. Petitioner is not entitled to a pre-detention hearing.

Petitioner alleges that the Government was required to provide him with a hearing prior to revoking his OSUP and detaining him in ICE custody. Doc. 8 at 17. Petitioner also alleges that ICE was required to comply with the regulations at 8 C.F.R. § 241.13(i). Doc. 8 at 22. As to Petitioner's argument that he was required to receive notice of the reasons for the revocation of release and an initial informal interview upon his return to custody pursuant to 8 C.F.R. § 241.13(i), Respondents agree and concede that there is nothing in Petitioner's file documenting that he received notice of the reasons for the revocation or an initial informal interview.

However, Petitioner was not entitled to a hearing prior to his OSUP being revoked. Neither 8 C.F.R. §§ 241.4, 241.13 or the Due Process Clause require advanced notice of ICE's intention to revoke an OSUP or a pre-revocation 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.") There is no statutory or regulatory requirement that entitles Petitioner to a hearing. *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 does not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022).

2. Petitioner's removal is possible.

A federal district court is authorized to grant a writ of habeas corpus under 28 U.S.C. § 2241 where a petitioner is "in custody under or by color of the authority of the United States . . . in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(1), (3). 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 v. Davis*, 533 U.S. 678 (2001), 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." *Id.* 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.*

ERO submitted a travel document request packet to ERO Headquarters' RIO unit on August 18, 2025. Ex. 1 at ¶ 19. The RIO has not responded to ERO's request for a status update regarding the travel document request. Ex. 1 at ¶¶ 20, 21. The government has removed aliens to Laos in 2025, Ex. 1 at ¶ 22, so Petitioner's removal at some point in the future is likely.

3. Petitioner's allegations regarding removal to a third country are wholly speculative.

ICE has not requested travel documents for a country other than Laos. *See* Ex. 1. Thus, Petitioner's concern that he could be removed to a third country are wholly speculative. Petitioner is incorrect that he can only be removed to a country if so ordered by an immigration judge. *See* Doc. 8 at 22 (arguing that 8 U.S.C. § 1231(b)(2)(E)(vii) requires that an immigration judge determine that Petitioner cannot be removed to Laos and that the designated third county is willing to accept Petitioner before he can be removed to a third country).

Petitioner argues that 8 U.S.C. § 1231(b)(2)(E)'s use of "Attorney General" means that an immigration judge must make the determination that removal to the country designated in the removal order is "impracticable, inadvisable, or impossible" and that "another country will accept the alien." *Id.* § 1231(b)(2)(E)(vii). Petitioner is incorrect. Congress transferred the authority for removal to the Secretary of Homeland Security in the Homeland Security Act of 2002, Pub. L. No. 107-296, § 1516, 116 Stat. 2125, 2311 (Nov. 25, 2002) (codified at 6 U.S.C. § 557).[1] *See Kousar v. Mueller*, 549 F. Supp. 2d 1194, 1198

[1] 6 U.S.C. § 557 states:

> With respect to any function transferred by or under this chapter (including under a reorganization plan that becomes effective under section 542 of this title) and exercised on or after the effective date of this chapter, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to

(N.D. Cal. 2008) ("Since March 1, 2003, the Department of Homeland Security has been the agency responsible for implementing the Immigration and Nationality Act." (citing 6 U.S.C. §§ 271(b)(5), 557)). Thus, it is DHS that has the authority remove aliens, not the Attorney General. The Ninth Circuit recently confirmed that DHS holds that authority, explaining:

> Both the immigration court and the Department of Homeland Security ("DHS"), which includes ICE, have authority to select a country of removal pursuant to § 1231(b)(1) and (b)(2). The immigration court acts first. "After determining that a noncitizen is removable, an IJ must assign a country of removal." *Hadera v. Gonzales*, 494 F.3d 1154, 1156 (9th Cir. 2007). The IJ "shall identify a country, or countries in the alternative, to which the alien's removal may in the first instance be made, pursuant to the provisions of [§ 1231(b)]." 8 C.F.R. § 1240.12(d); *see also id.* § 1240.10(f) ("The [IJ] shall also identify for the record a country, or countries in the alternative, to which the alien's removal may be made pursuant to [§ 1231(b)(2)] if the country of the alien's designation" fails). The IJ's designation is subject to judicial review through the petition-for-review process. *See, e.g.*, *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *Hadera*, 494 F.3d at 1156-59; *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (per curiam).
>
> After immigration court proceedings have ended, "DHS retains the authority to remove the alien to any other country authorized by the statute." *Johnson [v. Guzman Chavez]*, 594 U.S. [523] at 536, 141 S. Ct. 2271 [2021]. If DHS "is unable to remove the alien to the specified or alternative country or countries, the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [§ 1231(b)]." 8 C.F.R. § 1240.12(d); *see also id.* §§ 241.15, 208.16(f), 1208.16(f).

Ibarra-Perez v. United States, -- F.4th --, No. 24-631, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (alterations in original except inclusion of full citation in *Johnson v. Guzman Chavez*). Petitioner's argument that only the Attorney General—via an immigration judge—can designate a country for removal and that an alien's immigration proceedings must therefore be reopened prior to any third country removal is simply incorrect and premised upon a misunderstanding of the statute.

> refer to the Secretary, other official, or component of the Department to which such function is so transferred.

4. Petitioner is a *D.V.D.* class member, so his duplicative claims are foreclosed by the parallel case.

Even if Petitioner's removal to a third country was not wholly speculative, the Court should dismiss Petitioner's claims seeking additional, extra-statutory procedures prior to removal from the United States to a third country,[2] because those claims are already being adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 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); *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");

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[2] 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).

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 his 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). Although Petitioner discussed the *D.V.D.* case at length, he makes no mention of his class membership in his 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 his claims seeking additional procedures prior to his 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.

B. Petitioner cannot meet his burden to show irreparable harm.

The Court should deny Petitioner's Motion as to his third country removal claims 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. "[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 Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984).

Petitioner has been ordered removed to Laos—the country of his birth. Petitioner's speculation regarding the possibility of 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'").

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 requiring pre-revocation hearings and enjoining removal based solely on speculation 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 federal 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."). Petitioner has not established that he merits a preliminary injunction enjoining his removal to a third country—which this Court lacks jurisdiction to enter under the jurisdiction stripping language in 8 U.S.C. § 1252(g).

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).

IV. Conclusion.

In light of the foregoing, Respondents request that the Court deny the Motion for Temporary Restraining Order and Preliminary Injunction insofar as it seeks an order requiring Respondents to provide Petitioner with a pre-revocation hearing and enjoining his removal to a third country.

Respectfully submitted this 17th day of September, 2025.

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