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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Samir Aghar,

Petitioner,

v.

Fred Figueroa, Warden, *et al.*,

Respondents.

Case No. 2:25-cv-03147-KML-CDB

RESPONSE IN OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION AND A TEMPORARY RESTRAINING ORDER

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INTRODUCTION

Respondents Eloy Detention Center Warden Fred Figueroa, U.S. Immigration and Customs Enforcement ("USCIS") Field Office Director John Cantu, U.S. Attorney General Pam Bondi, and Department of Homeland Security ("DHS") Secretary Kristi Noem, in their official capacities, hereby file a response in opposition to Petitioner's Motion for a Preliminary Injunction and a Temporary Restraining Order ("Motion") as directed by the court in its September 2, 2025 Order. *See* ECF No. 5. Petitioner filed a Petition for a Writ of Habeas Corpus ("Petition") on August 28, 2025, alleging that his detention in civil immigration custody is a violation of his Fifth Amendment Due Process rights. Pet. ¶¶ 20–31, ECF No. 1. He now seeks the injunctive relief of immediate release from custody because of alleged Fifth Amendment violations. Mot. at 3, ECF No. 3.

RELEVANT FACTS

Petitioner is a native and citizen of Afghanistan who was encountered with his younger brother by U.S. Border Patrol on October 28, 2023. Ex. A, Decl. of Brian Ortega ¶ 5. Petitioner was found inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and placed into removal proceedings. *Id.* Because Petitioner was underage at the time, he was placed in HHS-ORR care. *Id.* ¶ 7. On April 17, 2025, Immigration and Customs Enforcement ("ICE") completed an Age-Out Review of Petitioner, determining the least restrictive placement was detention in Eloy, Arizona. *Id.* ¶ 11. The review also determined the Petitioner to be a danger to the community and a flight risk. *Id.* Petitioner, after he turned eighteen, was brought into ICE custody under 8 C.F.R. 235.3(b)(ii) (8 U.S.C. § 1225(b)) on April 21, 2025. *Id.* ¶ 13. Petitioner's next immigration court hearing is September 25,

2025, in Eloy, Arizona. *Id.* ¶ 20.

STANDARD OF REVIEW

"A preliminary injunction is an 'extraordinary and drastic remedy'" that "is never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (citation omitted). For this court to grant Petitioner the extraordinary remedy of a preliminary injunction, he must establish: "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The standard for issuing a temporary restraining order is identical to the preliminary injunction standard. *See Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc.*, 240 F.3d 832, 839 n. 7 (9th Cir.2001); *Spears v. Arizona Bd. of Regents*, 372 F. Supp. 3d 893, 926 (D. Ariz. 2019).

Petitioner quotes *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011), which states that "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 1135. However, Petitioner did not explain how he has brought "serious questions going to the merits" in his Motion, and thus Defendants maintain that the *Winter* test applies. *See also Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1031 (9th Cir. 2024) ("Serious questions are issues that 'cannot be resolved one way or the other at the hearing on the injunction because they require more deliberative

investigation'.... [and] [t]hus, parties do not show serious questions when they raise a 'merely plausible claim'....)

Thus, Petitioner fails to meet the standards required for this Court to issue him injunctive relief for the below reasons.

ARGUMENT

I. Petitioner Fails To Show A Likelihood Of Success On The Merits.

Petitioner fails to show a likelihood of success on the merits because Petitioner's lawful detention pursuant to 8 U.S.C. § 1225(b) does not violate the Due Process Clause of the Fifth Amendment.

In a motion for preliminary injunction, "[l]ikelihood of success on the merits is 'the most important' factor; if a movant fails to meet this 'threshold inquiry,' we need not consider the other factors." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018); *see also Assurance Wireless USA, L.P.*, 100 F.4th at 1031 (ending the analysis of a preliminary injunction motion after concluding movants failed to show a likelihood of success on the merits or serious questions on the merits). This holds especially true "where a [movant] seeks a preliminary injunction because of an alleged constitutional violation." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

In his Petition and subsequent motion for injunctive relief, Petitioner claims that his Fifth Amendment Due Process rights were violated because: (1) he is subject to indefinite detention; (2) he was not considered for placement in "the least restrictive setting";[1] and

[1] Petitioner did not explicitly mention this argument in his Motion, but it is included in his Petition at ¶¶ 25–27. Respondents thus discuss it briefly below.

(3) he was not afforded a bond hearing. However, Petitioner is unlikely to succeed on any of these claims, and thus the Court should deny Petitioner injunctive relief.

A. Petitioner's claim that he is subject to indefinite detention is unripe.

Petitioner claims he is subject to indefinite detention because there is no likelihood that he can returned to his home country of Afghanistan; however, this claim is not ripe.

A claim is unripe if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Flaxman v. Ferguson*, No. 24-919, 2025 WL 2424420 (9th Cir. Aug. 22, 2025) (internal quotations omitted). Constitutional claims are generally ripe only if a petitioner has standing. *Id.* One requirement of Article III standing is that a petitioner has suffered an injury in fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, *not conjectural or hypothetical.*'" *Id.* at 339 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (emphasis added).

Petitioner is currently in removal proceedings and has a pending application for relief from removal. Ex. A, Decl. of Brian Ortega ¶ 17, 18, 20. Thus, it remains uncertain whether Petitioner will be ordered removed at all, much less to what country. Petitioner also fails to recognize DHS's ability to remove individuals to third party countries in circumstances when it is unable to remove individuals to their country of origin or residence. *See* 8 U.S.C. § 1231(b)(1)(C)(iv); § 1231(b)(2)(E); *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Regardless, Petitioner's claim of indefinite detention is hypothetical.

Further, Section 1225(b) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). This conclusion conforms with the long-running understanding that the due process rights of arriving aliens are limited. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). The Supreme Court reaffirmed this in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), where it held that "an alien at the threshold of initial entry" has no procedural due process rights "other than those afforded by statute." 591 U.S. at 107. The Ninth Circuit has continued to apply this principal to arriving aliens placed into removal proceedings under 8 U.S.C. § 1225(b). *See Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022) ("any rights [Petitioner] may have in regard to removal or admission are purely statutory in nature and are not derived from, or protected by, the Constitution's Due Process Clause."). "[Sections] 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time," namely "throughout the completion of applicable proceedings." *Jennings*, 583 U.S. at 299, 302; *id.* at 300 ("neither provision can reasonably be read to limit detention to six months."). And, *if* Petitioner is eventually ordered removed, his detention pending removal would be mandated by a different statute: 8 U.S.C.§ 1231(a)(2). *Khotesouvan v. Morones*, 386 F.3d 1298, 1300 (9th Cir. 2004) ("[D]uring the 90–day removal period . . . aliens must be held in custody.") (citing *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001)); *id.* at 1301 ("[T]he period of detention under § 1231(a)(2) also passes constitutional scrutiny.").

As of the date of this filing, Petitioner has been held in immigration detention for less than five months. Ex. A, Decl. of Brian Ortega ¶ 13. Petitioner has an immigration

hearing on his application for relief from removal on September 25, 2025. *Id.* ¶ 20. In his Motion, Petitioner provides *no* evidence to show that his detention is indefinite, or in violation of the Constitution, *See* Mot. at 2. Even if Petitioner was arguing that his current detention is a violation, Petitioner points to no authority that has found Section 1225(b) detention under a year to be unconstitutionally prolonged. Petitioner merely speculates that, because the United States and Afghanistan have no diplomatic ties, he will be held indefinitely in immigration detention. *Id.* Ultimately, Petitioner's speculative future claim about indefinite detention, when he lacks a final order of removal or the conclusion of his removal proceedings, is unripe for suit.

Lastly, Petitioner's claim that he is detained pursuant to Section 1226(a) and not Section 1225(b), "because he is not now and was never in expedited removal proceedings described in § 1225(b)" is irrelevant to his claim of indefinite detention, but is also incorrect. Pet. ¶ 21.c. ICE retains discretion as to whether to place an arriving alien into expedited removal proceedings or full removal proceedings under Section 1229a. *See Flores v. Barr*, 934 F.3d 910, 916-17 (9th Cir. 2019) ("The government has discretion to place noncitizens in standard removal proceedings even if the expedited removal statute could be applied to them.") (citing *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 524 (BIA 2011)). It is the manner in which an alien arrived and the timing and location of his arrest and detention, rather than the type of removal proceedings in which he may be placed, that determine his status as an arriving alien under Section 1225(b). *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (An alien "who tries to enter the country illegally is treated as an 'applicant for admission.'") (quoting 8 U.S.C. § 1225(a)(1)); *id.* ("[A]nd an

alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry,'" and is in the same position as an alien seeking admission at a port of entry) (quoting *Zadvydas*, 533 U.S. at 693).

Therefore, Petitioner's detention does not violate his Due Process rights, and his claim is unlikely to succeed on the merits.

B. Petitioner was considered for placement with a sponsor within the confines of 8 U.S.C. § 1232(c)(2)(B).

Petitioner, solely upon information and belief, alleges that the Secretary did not consider Petitioner to be eligible for placement with a sponsor prior to placing him in immigration detention. Pet. ¶ 15.c. Petitioner provides no evidence that Respondents did not follow proper procedures under 8 U.S.C. § 1232(c)(2)(B). In fact, ICE completed an Age-Out Review on April 17, 2025, and determined that Petitioner was a danger to the community and a flight risk, and thus detention was the least restrictive placement possible. Ex. A, Decl. of Brian Ortega ¶ 11. Thus, Petitioner is unlikely to succeed on the merits of this claim.

C. Petitioner does not have a constitutional right to a bond hearing.

8 U.S.C. § 1225 does not afford Petitioner a right to a bond hearing by this Court or before an immigration judge. *See Jennings*, 583 U.S. at 300 (holding that because an individual detained under § 1225(b) may be temporarily paroled under 8 U.S.C. § 1182(d)(5)(A), it is implie[d] that there are no other circumstances under which aliens detained under § 1225(b) may be released."); *cf.* 8 U.S.C. § 1226(a) ("the Attorney General may release the alien on bond . . . or conditional parole"). Because Petitioner is held in mandatory detention pursuant to 8 U.S.C. § 1225(b) pending further removal proceedings,

Petitioner is not entitled to a bond hearing by statute. 8 U.S.C. § 1225(b) "mandate[s] detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Neither provision "imposes any limit on the length of detention" or "says anything whatsoever about bond hearings." *Id.* The Ninth Circuit has held, by extending the logic of *Jennings*, that individuals in mandatory detention prior to removal are not statutorily entitled to a bond hearing. *Avilez v. Garland*, 69 F.4th 525, 536 (9th Cir. 2023). Therefore, Petitioner's claim that the denial of a bond hearing is a violation of his Due Process rights is unlikely to succeed on the merits.

II. Even If The Court Considers The Other Preliminary Injunction Factors, Petitioner Fails To Satisfy Them.

Because Petitioner fails to show that he is likely to succeed on the merits of his claim, the court's inquiry should end. *See Azar*, 911 F.3d at 575. However, even if the court considered the remaining three factors, Petitioner fails to satisfy them.

First, Petitioner fails to show how he will face irreparable harm absent the grant of injunctive relief. "A plaintiff seeking preliminary relief must 'demonstrate that irreparable injury is likely in the absence of an injunction.'" *Azar*, 911 F.3d at 581. Although Petitioner cites *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), to claim he is subject to irreparable harm in confinement, Petitioner has failed to establish a violation of any constitutional rights. *See* Mot. at 2; *Melendres*, 695 F.3d at 1002 (holding that a violation of *constitutional rights* is an irreparable injury); *cf. Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 500 F. Supp. 3d 1088, 1100–01 (C.D. Cal. 2020), *aff'd*, 10 F.4th 905 (9th Cir. 2021) (holding there was no irreparable harm where movement was unlikely to succeed on the merits of their constitutional claim). And Petitioner fails to show the need for

independent injunctive relief because the habeas petition has the potential to result in the same relief sought in the preliminary injunction: release from custody. *See Sires v. State of Wash.*, 314 F.2d 883, 884 (9th Cir. 1963) (denying a preliminary injunction motion because Petitioner failed to show how any relief he was entitled to could not be fully realized during habeas corpus proceedings without the grant of an injunction).

Next, Petitioner fails to show how the balance of equities and public interest weighs in his favor. These factors merge when the Government is a party. *Azar*, 911 F. 3d at 575. Petitioner again cites *Melendres* to claim the equities balance his immediate relief; however, he fails to show that any constitutional rights violations have occurred. *See supra* § I. Further, the requested injunction would impose a significant burden on government agencies as it directly interferes with their discretionary powers under the removal statutes. It would not be equitable to the government nor serve public interest for this Court to seize control over the removal authority and decisions that Congress expressly commended to the Secretary's discretion in 8 U.S.C. § 1225(b) and § 1232(c)(2)(B).

III. Finally, If The Court Enters A Preliminary Injunction, Petitioner Must Comply With Fed. R. Civ. P. 65(c).

Fed. R. Civ. P. 65(c) mandates that "[t]he court may issue a preliminary injunction . . . 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." To the extent that the Court grants relief to Petitioner, Respondents respectfully request that the Court require Petitioner to post security for any taxpayer funds expended during the pendency of the Court's order. Failure of Petitioner to comply with Fed. R. Civ. P. 65(c) should result in denial or dissolution of the requested injunctive relief.

CONCLUSION

For the foregoing reasons, the Court should DENY Petitioner's Motion for a Preliminary Injunction and for a Temporary Restraining Order.

DATED this 8th day of September 2025. Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document on September 8, 2025, on the Electronic Case Filing (ECF) System, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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