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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ali Hamad Al Bazergan Petitioner, v. Donald J. Trump, et al., Respondents.	No. CV-25-03171-PHX-JJT(JFM) **RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (DOC. 2)**

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

I. INTRODUCTION

Petitioner Al Bazergan's motion for TRO and PI seeks an order to release him from detention; an order that he not be re-detained without a hearing before a neutral

decisionmaker; and an order enjoining his removal to a third country without notice and an opportunity to seek relief.

II. BACKGROUND

Petitioner has a 35-year immigration history summarized in the Declaration of Deportation Officer Ernesto F. Yanez, the assigned docket officer over Petitioner's case. Exhibit A ¶ 2. Petitioner was found to be an inadmissible alien pursuant to 8 U.S.C. § 1182(a)(3)(E)(ii)[1] due to his participation in the genocidal 1988 Anfal campaign against the Kurds in Iraq prior to coming to the United States, a finding that was affirmed by BIA on April 23, 2015. For the same reason, he was and is ineligible for asylum or withholding of removal. *Id.* ¶¶ 11-13.

Al Bazargan is a native and citizen of Iraq, born in 1960 in Baghdad, Iraq. *Id.* ¶ 3. On March 10, 1990, Al Bazergan applied for admission into the United States at the Los Angeles International Airport by presenting his lawfully issued non-immigrant visitor's visa and passport for inspection. Al Bazergan was subsequently admitted into the United States as a non-immigrant for pleasure with authorization to remain in the United States for a temporary period not to exceed six months. *Id.* ¶ 4.

In July 1992, Al Bazergan filed Form 1-589, Application for Asylum and for Withholding of Removal, with the legacy U.S. Immigration and Naturalization Service (INS). *Id.* ¶ 5. After being interviewed twice, his application was referred for a lack of credibility. *Id.* ¶ 6-7. In 1998, INS issued and mailed Al Bazergan a Form 1-862, Notice to Appear (NTA), charging him with violating Section 237(a)(l)(B) of the Immigration and Nationality Act ("INA"), as an alien who after admission as a non-immigrant under Section 10l(a)(15) of the INA, remained in the United States for a time longer than permitted. *Id.* ¶ 8. In September 2008, an Immigration Judge ("IJ") in Los Angeles, California, issued a written decision denying all forms of relief, and ordering Al Bazergan removed from the United States to Iraq. Al Bazergan filed an appeal of the Immigration Judge's decision with the Board of Immigration Appeals ("BIA"). In May 2010, the BIA sustained Al Bazergan's

[1] INA 212(a)(3)(E)(ii).

appeal, vacated the Immigration Judge's decision, granted Al Bazergan's request for a change of venue, and remanded the record to EOIR in Tucson, Arizona, for further proceedings and entry of a new decision. *Id.* ¶ 9-10.

In April 2013, an Immigration Judge in Tucson, Arizona, denied all forms of relief, and ordered Al Bazergan removed from the United States to Iraq, and the BIA dismissed Al Bazergan's appeal. *Id.* ¶¶ 11-13. In May 2015, Al Bazergan filed a Petition for Review ("PFR") and Motion for Stay of Removal with the U.S. Court of Appeals for Ninth Circuit. On October 21, 2015, the Ninth Circuit denied Al Bazergan's stay of removal. *Id.* ¶ 14.

On January 12, 2016, ICE apprehended Al Bazergan at his place of employment in Tucson, Arizona, and he was transferred to the Eloy Detention Center in Eloy, Arizona, for removal to Iraq. A week later, ICE uploaded a request for a travel document and sent a hard copy to the Consulate General of Iraq in Los Angeles. *Id.* ¶¶ 15-17. Eventually, after discussion and an interview of Al Bazergan, the Consulate General of Iraq refused to issue a travel document. *Id.* ¶¶ 20-21. Al Bazergan refused to assist ICE with his removal. *Id.* ¶¶ 22-25.

In November 2016, Al Bazergan filed a second Motion to Reopen with the BIA. In February 2017, the BIA granted Al Bazergan's motion and remanded the record to the IJ for further proceedings and the entry of a new decision. *Id.* ¶ 35. In October 2017, an IJ issued a written decision and granted deferral of removal to Iraq under Convention Against Torture ("CAT"). *Id.* ¶ 38. DHS filed an appeal with the BIA regarding the IJ's written decision granting deferral of removal under CAT. *Id.* ¶ 39.

On January 18, 2018, Al Bazergan filed a Petition for Writ of Habeas Corpus and Motion for Preliminary Injunction and/or Temporary Restraining Order with the United States District Court of Arizona. *Id.* ¶ 42. On February 5, 2018, an IJ granted that Al Bazergan be released on Conditional Parole and report to the ICE Deportation and Removal Operations Office at Tucson, Arizona, on the first Tuesday of the month of each calendar quarter beginning on April 3, 2018. Al Bazergan was released on February 5, 2018, from the custody of Eloy Detention Center on the conditions of Conditional Parole. *Id.* ¶ 43. In

April 2018, the BIA affirmed the IJ's decision and dismissed DHS's appeal. *Id.* ¶ 46. In October 2018, an IJ ordered Al Bazergan to be granted deferral of removal to Iraq under CAT. Both parties waived appeal. *Id.* ¶ 47. Al Bazergan reported to the ICE/ERO Tucson Field Office and was issued an I-220B Order of Supervision ("OSUP") by ICE/ERO. *Id.* ¶ 48.[2]

On July 23, 2025, Al Bazergan was taken into custody by Tucson ERO. The conditions of release on OSUP were revoked by the recent Supreme Court decision regarding Deferral of Removal under CAT and removals to third countries. Al Bazergan was notified and served the Notice of Revocation of Release on the same date as his arrest. *Id.* ¶ 49; Exhibit B. He was transported to the ICE/ERO Florence Detention Center in Florence, Arizona for further processing and then transferred to the ICE/ERO Eloy Detention Center. *Id.* ¶ 50-51.

On August 1, 2025, Al Bazergan was interviewed and informed of the Alien Informal Interview regarding the Revocation of Order of Supervision under 8 C.F.R. § 241.4(I); 8 C.F.R. § 241.13(i). Al Bazergan was afforded the opportunity to respond to the Alien Informal Interview and did the same date of as the interview and responded with "I've been in the US since 1990. I came as a tourist visa. I applied for asylum. My English was poor I did not understand the interpreter. USCIS gave me a work permit. I have not committed any crimes in the US. I've been the driver for Gabby Giffords since 2011." Al Bazergan did not provide a written statement and did not provide any documents during the interview. *Id.* ¶ 52; Exhibit C.

On August 01, 2025, ICE/ERO contacted Deportation Detention Officers ("DDO") to assist with third country removals. *Id.* ¶ 53. On August 5, 2025, a DDO for the Middle East/East Africa responded; jurisdiction of this case remains with the Field Office. *Id.* ¶ 54. On August 7, 2025, ICE officers sent Form I-241 to Egypt, Jordan and Türkiye regarding if they would accept Al Bazergan into their country due to being inadmissible in

[2] The order of supervision is mandated by 8 U.S.C. 1231(a)(6) because Petitioner was found to be inadmissible under section 1182.

the United States. *Id.* ¶ 55. As of September 3, 2025, ICE has not received responses from Egypt, Jordan or Türkiye. *Id.* ¶ 56.

III. LEGAL FRAMEWORK FOR TRO AND PI

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

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is aptly described as a "heavy" one.

Id.

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

IV. ARGUMENT

A. Revocation of release and detention pending review are proper.

ICE has followed the proper procedures associated with revocation of release under 8 C.F.R. § 241.4(l). Al Bazergan was given a Notice of Revocation of Release on the day he was arrested. Exhibit B. ICE conducted an informal interview within a reasonable time after his return to custody. Exhibit C. Based on 8 C.F.R. § 241.13, Al Bazergan is held in custody pending his removal to a third country. His custody review is scheduled for October 23, 2025, exactly three months after the revocation of release.

ICE is actively pursuing a third country for removal. ICE has officially requested Egypt, Jordan and Turkey to accept Al Bazergan, and is waiting for a response. ICE often reevaluates and/or reasserts its third country requests in 30 days, which time has not yet

expired since making the requests. ICE anticipates it will be able to remove Al Bazergan within the reasonably foreseeable future.

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

Petitioner's motion for TRO/PI seeks a stay of removal to any third country outside the United States pending the completion of extra-statutory procedures to remove him. This claim is barred by the plain language of 8 U.S.C. § 1252(g).

Congress spoke clearly that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

Petitioner's claims arise from his concerns about the execution of his removal order and his detention pending execution of his removal order to a third country. The Petition seeks, in part, to require ICE to provide him with additional procedures prior to his removal to a third country. The TRO/PI Motion seeks an order enjoining Respondents from removing him to any third country without first providing constitutionally-compliant procedures. But numerous courts of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of removal—even temporarily to assert other claims to relief—are barred by Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred petitioner's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a

removal order rather than its *execution* of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner's argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Here, Petitioner's challenges to the Government's ability to execute a valid final removal order by removing him to a third country (other than Iraq), are squarely prohibited by 8 U.S.C. § 1252(g).

V. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

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

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

Petitioner relies on the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001), to allege a violation of his constitutional rights. Ordinarily, once an alien has been ordered removed, the Government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly referred to as the "removal period." However, another provision, 8 U.S.C. § 1231(a)(6), permits detention of an alien after the removal period for certain categories of aliens. Although the post-removal-period detention statute contains no time limit on detention, in *Zadvydas*, the Supreme Court explained that the Fifth Amendment's Due Process Clause "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from

the United States. It does not permit indefinite detention." 533 U.S. at 689.

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

DHS has enacted regulations relating to aliens who are detained beyond the removal period and subject to release. *See* 8 C.F.R. § 241.4; *see also* 8 C.F.R. § 241.13. Here, ICE properly provided notice of the revocation of release under 8 C.F.R. § 241.13(i)(2) by written document (Exhibit B) because there is a significant likelihood Petitioner can be removed in the reasonably foreseeable future, as established below.

Consistent with this regulation, on July 23, 2025, Petitioner was provided notice of the revocation of his prior release order and granted an informal interview in which he had the opportunity to provide evidence that his removal is not likely in the reasonably foreseeable future. Exhibits B and C. ICE has complied with the regulations for revoking release under this section, where there is now a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. 241.13(i)(2).

The purpose of § 1231(a)(6) detention is to effectuate removal. *See Demore v. Kim*, 538 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining the removal period was based on the "reasonably necessary" time in order "to secure the alien's removal"). The statute provides that—if the alien is not removed—the alien "shall be subject to supervision" under relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). Here, Petitioner's OSUP was revoked and he was re-detained because the government determined it was significantly likely to be able to effectuate his remove to a third country

in the reasonably foreseeable future. *See* 8 C.F.R. 241.13(i)(2). He has been re-detained for approximately six weeks while the Government attempts to execute his valid final removal order to a third country. His continued detention, while the Government seeks to effectuate his removal and enforce a valid removal order, violates neither section 1231 nor *Zadvydas*. 533 U.S. at 689.

Indeed, Petitioner has a valid final removal order that is executable to anywhere except Iraq. As argued above, this Court is barred from enjoining his removal to a third country by 8 U.S.C. § 1252(g). Here, Petitioner has only been re-detained for a little over one month while the Government attempts to remove him to a viable third country. Egypt, Jordan and Turkey may yet accept Petitioner and ICE is still making an individualized request for travel documents on Petitioner's behalf. Exhibit A ¶¶ 54-56.

Respondent's do not contend that the six-month presumptively reasonable removal period under *Zadvydas* restarted when Petitioner was re-detained. However, it is still Petitioner's burden to establish that there is no likelihood of removal in the reasonably foreseeable future to warrant release under *Zadvydas*. *See Zadvydas*, 533 U.S. at 689. Six weeks is simply insufficient time to establish that the Government is unable to effectuate Petitioner's removal in the reasonably foreseeable future. *Id.*

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

Here, Petitioner's revocation of supervised release was pursuant to 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Notably, neither section requires pre-revocation notice or a pre-detention hearing. *See Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) ("Here, Petitioners have not alleged with sufficient particularity the source of any due process right to advance notice of revocation of supervised release or other removal-related detention.") Neither do either of these applicable regulations require a "change in circumstances" as Petitioner argues. Petitioner has failed to plead that Respondents violated 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13 or any procedural due process rights created thereunder.

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

The Due Process Clause did not prohibit ICE from re-detaining Petitioner. Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a "pre-deprivation" hearing, much less one involving burden-shifting against the government. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. For this Court to read one into the immigration custody statute would be to create a process that the current statutory and regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process protections attach.

Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472-73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 481. In addition, the "[c]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function." *Id.* With respect to the precise nature of the government function, the Supreme Court has long held that "Congress regularly makes rules" regarding immigration that "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty interest in a pre-detention hearing, but even assuming he had one, it would be reduced based on the immigration context.

The procedural process provided to Petitioner after being re-detained, is constitutionally adequate in the circumstances and no additional process is required. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful

time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. The first factor favors Respondents. The Supreme Court has long recognized that due process as applied to aliens in matters related to immigration does not require the same strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when exercising its "broad power over naturalization and immigration, Congress regularly makes rules regarding aliens that would be unacceptable if applied to citizens." *Diaz*, 426 U.S. at 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the individuals subject to immigration detention possess at least a limited liberty interest, it has also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner's liberty interest is less than that at issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-detention hearing.

The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens including Petitioner face little risk of erroneous deprivation. As explained above, there is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably authorizes Petitioner's detention to execute his final removal order to a third country, and ICE is required to give Petitioner additional procedures under the Post Order Custody Review Regulations in 8 C.F.R. § 241.4. These regulations require periodic custody reviews in which Petitioner will have the opportunity to submit documents in support of

his release, including documentation about flight risk and dangerousness. *See generally* 8 C.F.R. § 241.4(e)-(f) (listing factors to be considered in custody determinations). These procedures are more than adequate and unquestionably provide Petitioner notice and opportunity to be heard during his detention.

The third *Mathews* factor—the value of additional safeguards relative to the fiscal and administrative burdens that they would impose—weighs heavily in favor of Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation hearing—adds little value to the system already in place in which he will receive periodic reviews to ensure his removal remains reasonably foreseeable and in which the entire purpose of his detention is to effectuate his removal. Petitioner's proposed safeguard would disrupt the removal process. Because the hearing Petitioner proposes would, by definition, involve a non-detained individual, there would be significant hurdles to efficiently scheduling a hearing. There is no administrative process in place for giving an alien with a final order of removal a hearing resembling a bond hearing before an immigration judge. Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the current procedures. *See* 8 C.F.R. § 241.4.

Respondents recognize that Petitioner is making an individualized challenge here. However, the additional procedure he requests would have a significant impact on the removal system. It would require ICE and the Executive Office of Immigration Review to set up a novel administrative process for Petitioner who—for all intents and purposes—represents a large portion of the final order alien population. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-deprivation hearing.

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

This Court should dismiss Petitioner's claims seeking additional, extra-statutory procedures prior to removal from the United States to a third country,[3] because those claims

[3] In the INA, Congress has enacted provisions governing the determination of the country to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United

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

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

The district court in *Herrera* explained that "Petitioner's allegations regarding the

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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). Importantly, 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).

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

Multiple courts of appeals have upheld dismissals of cases where parallel class actions raise the same or substantially similar issues. *See, e.g.*, *Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss "those portions of [the] complaint which duplicate the [class action's] allegations and prayer for relief"); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Gillespie v. Crawford,* 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class action has been certified, "[s]eparate individual suits may not be maintained for equitable relief"); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) ("If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified").

Petitioner's claims seeking to delay or otherwise prohibit 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). Petitioner makes no mention of his class membership in his Petition or Motion.

Because the *D.V.D.* class was certified pursuant to 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 the 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 actively litigated in *D.V.D.* To do otherwise would undermine what Rule 23 was intended to ensure: consistency of treatment for similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel litigation in district courts all over the country which could ultimately threaten the certification of the underlying class by creating differences among the class members. Another court is already considering Petitioner's

alleged constitutional right to extra-statutory procedures before removal to a third country. This Court should therefore the claims seeking such relief.

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

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

Petitioner's contentions regarding the possibility 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'"). Petitioner argues that any continued detention will be detrimental to him because the conditions in immigration facilities are known to be bad, and his detention will irreparably harm his U.S. Citizen friends and family. But, "there is no constitutional infringement if restrictions imposed" are "but an incident of some other legitimate government purpose." *Slaughter*, 2006 WL 5811899, at *4 (citing, *e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). "In such a circumstance, governmental restrictions are permissible." *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 747, (1987)).

Petitioner cannot show that denying the temporary restraining order would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must] demonstrate that irreparable injury is *likely* in the absence of an injunction.") (emphasis in original). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." *Id.* "Speculative injury does not constitute irreparable

injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention and provided a pre-detention hearing.

C. The equities and public interest do not favor Petitioner.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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

While it is in the public interest to protect constitutional rights, if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's admitted participation in violent crimes in the past and the significant likelihood of removal to Egypt, Jordan or Turkey in the reasonably foreseeable future, the public and governmental interest in permitting his detention is significant. Thus, Petitioner

has not established that he merits a temporary restraining order.

VI. CONCLUSION

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

RESPECTFULLY SUBMITTED September 5, 2025.

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