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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Khikmatdzhon Iakubov, Petitioner, v. Fred Figueroa, et al., Respondents.	No. 2:25-cv-03187-KML--JZB **RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Respondents Fred Figueroa, Warden, Eloy Detention Center; John Cantu, Phoenix Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"); Todd Lyons, Acting Director of ICE; Kristi Noem, Secretary of the Department of Homeland Security ("DHS"); and Pam Bondi, Attorney General of the United States ("Respondents"), by the through undersigned counsel, respond in opposition to Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2). 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, will provide Petitioner with due process prior to removing him to a safe third country.

I. Factual background.

Petitioner is a citizen of Russia, born in Tajikistan. Ex. A, Decl. of Gerardo Martinez, at ¶ 5. Petitioner entered the United States near San Luis, Arizona, on January 9, 2024, without being admitted or paroled. Ex. A at ¶ 6. Petitioner was placed into removal proceedings and detained. Ex. A at ¶¶ 7, 9. On February 9, 2024, an immigration judge denied Petitioner's request for a change in custody status after finding him to be a flight risk. Ex. A at ¶ 11. On July 15, 2024, Petitioner was ordered removed from the United States, but granted withholding of removal to Tajikistan and Russia, and was granted withholding of removal to Russia under the Convention Against Torture ("CAT"). Ex. A at ¶ 12. ICE appealed to the Board of Immigration Appeals ("BIA") and later filed a motion to remand. Ex. A at ¶ 14. The BIA denied the motion to remand and dismissed ICE's appeal on February 25, 2025. Ex. A at ¶ 15. In March 2025, ICE sent requests for assistance of the Consulate Generals of the Kingdom of Jordan, the People's Republic of China, and the Republic of Türkiye asking them to accept Petitioner. Ex. A at ¶ 16. Türkiye and Jordan have declined to accept Petitioner. Ex. A at ¶¶ 17, 20. In April 2025, ICE sent requests for assistance to the Consulate Generals of Uzbekistan, Kyrgyzstan, and Hungary. Ex. A at ¶ 18. Those countries have not yet responded. Ex. A at ¶ 26. On June 5, 2025, ERO completed a 90-day Post Order Custody Review ("POCR"). Ex. A at ¶ 21. Petitioner was served with the Decision to Continue Detention on June 10, 2025. Ex. A at ¶ 22. On June 27, 2025, Petitioner was served with a Notice to Alien of Interview for Review of Custody. Ex. A at ¶ 23. On July 24, 2025, the Interview for Review of Custody was conducted and served. Ex. A at ¶ 24. On August 25, 2025, Petitioner's case was transferred to Headquarters for all POCR matters. Ex. A at ¶ 25. A 180-day POCR is currently pending. Ex. A at ¶ 25. ERO is actively working to secure Petitioner removal to a safe third country. Ex. A at ¶ 27.

On September 2, 2025, Petitioner filed this habeas action raising four claims for relief. The first three claims are that his detention violates 8 U.S.C. § 1231(a), as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001), his due process rights under the Fifth Amendment, and the Administrative Procedure Act because ICE failed to provide custody reviews required by 8 C.F.R. § 241.4. His fourth claim is that his procedural due process

rights would be violated by removal to a third country without notice. Petitioner also filed a Motion for Temporary Retraining Order and Preliminary Injunction seeking his immediate release from immigration detention and enjoining his removal to any third country without at least 21-days advanced notice in a language he can understand and a meaningful opportunity to contest such removal. Doc. 5 at 19.

II. Legal framework for temporary restraining order and preliminary injunctions.

Petitioner has styled his motion for injunctive relief as seeking both a preliminary injunction and a temporary restraining order. The standard for analyzing a motion for a temporary restraining order 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"). 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. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

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.* 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*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)).

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

III. The Court lacks jurisdiction to stay Petitioner's removal.

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

Petitioner's claim seeking a stay of removal pending the completion of extra-statutory procedures to remove him is barred by 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." 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, and the Petition seeks, in part, to require ICE to provide him with additional procedures prior to his removal, *see* Doc. 1 at Prayer for Relief at (g), while the Motion seeks an order enjoining Respondents from "removing him to a third country without first providing him with twenty-one days' notice in a language he can understand and a meaningful opportunity to contest such removal[,]" Doc. 2 at 19. He also seeks his immediate release from custody. *Id.* Numerous courts of appeals, including the Ninth Circuit, have 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").

2. The Foreign Affairs Reform and Restructuring Act of 1998 precludes Petitioner's claims related to additional CAT process.

Petitioner's claims seeking an order from the Court requiring Respondents to provide him with additional procedures beyond what CAT provides run afoul of Section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), which implements Article 3 of CAT and provides that:

> Notwithstanding any other provision of law, and except as provided [by regulation], *no court shall have jurisdiction to review the regulations adopted to implement this section*, and *nothing in this section shall be construed as providing any court jurisdiction to consider or review* claims raised under the Convention or this section[.]

FARRA § 2242(d), codified at 8 U.S.C. § 1231 (note) (emphasis added). *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 959 (9th Cir. 2012) (concurrence, discussing same).

Any judicial review of any claim arising under CAT is available exclusively on an individualized basis "as part of the review of a final order of removal" in the courts of appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same for "any other determination made with respect to the application of [CAT]"); *cf. Nasrallah*, 590 U.S. at 580 (discussing FARRA). Under FARRA, "no court" has jurisdiction to review DHS's implementation of CAT, yet that is precisely what Petitioner seeks here by asking the Court to order ICE to comply with additional procedures so that Petitioner may seek withholding of removal under CAT to a third country.

Notably, CAT is not self-executing. *See Borjas-Borjas v. Barr*, No. 20-cv-0417-TUC-RML (CK), 2020 WL 13544984, at *5 (D. Ariz. Oct. 6, 2020) (discussing same). Its effect, if any, depends on implementation via domestic law. Congress thus worked well within its authority to limit judicial review of CAT regulations and CAT claims. Because

Petitioner seeks *additional* procedures beyond what CAT provides, he is challenging the implementation of CAT as applied to him, which is barred by FARRA.

IV. 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,[1] 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

[1] 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).

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). 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.

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) and is not prolonged.

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 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. 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. 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").

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." *Zadvydas*, 533 U.S. at 701. *Zadvydas* places the burden on the alien 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.* If the alien makes that showing, the Government must then introduce evidence to refute that assertion to keep the alien 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 alien's presence at the moment of removal. *Zadvydas*, 533 U.S. at 699.

Here, Petitioner as an alien who was not admitted or paroled, Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). The 90-day removal period began to run on the date the order of removal became administratively final. 8 U.S.C. § 1231(a)(1)(B)(i). The removal order became administratively final on February 25, 2025, when the BIA affirmed the order. *See* 8 U.S.C. § 1101(a)(47)(B)(i); *see also* 8 C.F.R. § 1241.1(a). Thus, the 90-day removal period expired on May 26, 2025, and ERO completed

the required 90-day POCR as required by 8 C.F.R. § 241.4(c)(1). Ex. A at ¶ 21. Further custody review has been transferred to the Headquarters Post-Order Detention Unit pursuant to 8 C.F.R. §§ 241.4(c), (k)(ii) and his180-day custody review by Headquarters is pending. Ex. A ¶ 25.

As of the date the habeas petition and motion for temporary restraining order and preliminary injunction were filed, Petitioner had been detained for 6 months and 8 days. However, *Zadvydas* does not require that Petitioner be released from immigration after 6 months. Rather, Petitioner must show that there is no reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner speculates that his removal is not likely because he cannot be removed to Russia or Tajikistan, and he does not have citizenship or ties to another country. Doc. 5 at 12 (citing Doc. 1 at ¶ 55). But Petitioner's speculation, especially given that he has been detained for only a few days beyond six-months, is insufficient to warrant habeas relief. *See Mattete v. Loiselle*, No. 2:06CV652, 2007 WL 3223304, at *4 (E.D. Va. Oct. 26, 2007) ("Even though a nation has not granted travel documents to a petitioner, or has refused to grant travel documents, [that] does not prove that a petitioner has no reasonable likelihood of being removed."). Indeed, so long as "[p]rogress, however slow, is being made" towards an alien's removal, his continued detention is in accord with due process under *Zadvydas*. *See Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001). Even if Petitioner had met his initial burden to demonstrate that "there is no significant likelihood of removal in the reasonably foreseeable future" such that the burden then shifted to the Government to produce evidence in rebuttal, the Government has adduced sufficient evidence to show that it has taken active steps to secure Petitioner's removal. The Government has been actively seeking a third country to accept Petitioner and has requests pending with Uzbekistan, Hungary, and Kyrgyzstan. Ex. A at ¶ 26. The Government is not at an impasse in removing Petitioner, his removal is significantly likely, and Petitioner's detention is not unconstitutionally prolonged. Accordingly, Petitioner is unlikely to succeed on his habeas petition.

2. Petitioner asserts claims that are not cognizable in habeas.

Petitioner's third claim for relief alleges that Respondents have violated the APA with respect to their custodial decision, but an APA claim is not properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, "judicial review" refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement."). Here, Petitioner's APA claim related to Respondents' compliance with the regulations regarding custody reviews and their custody decisions fall outside the scope of relief provided for in a habeas petition particularly where it fails to challenge the legality or duration of Petitioner's confinement. *See Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'" (quoting *Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir. 2023)). Thus, Petitioner is unlikely to succeed on the merits of this claim because it is not properly asserted in a § 2241 habeas petition.

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

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

Petitioner's contentions regarding the possibility removal to a third country do not "rise to the level of "'immediate threatened injury' that is required to obtain a preliminary injunction." *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16, 2008) ("Plaintiff's argument of possible harm does not rise to the

level of 'immediate threatened injury'"). Petitioner essentially argues that any continued detention will be detrimental to him because the conditions in immigrations facilities are known to be "subpar" and because his detention violates his constitutional rights it necessarily constitutes irreparable harm. Doc. 5 at 16. But, "there is no constitutional infringement if restrictions imposed" are "but an incident of some other legitimate government purpose." *Slaughter*, 2006 WL 5811899, at *4 (citing, *e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). "In such a circumstance, governmental restrictions are permissible." *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 747, (1987)).

Petitioner cannot show that denying the temporary restraining order would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must] demonstrate that irreparable injury is *likely* in the absence of an injunction.") (emphasis in original). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner has not established irreparable harm due either the possibility of his removal to a third country or from his continued detention while his removal is likely.

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 the Government's continuing efforts to remove Petitioner and the limited length of his detention, as well as his status as a *D.V.D.* class member, the public and governmental interest in permitting his detention and removal is significant. Thus, Petitioner has not established that he merits a temporary restraining order or preliminary injunction directing his immediate release from immigration custody and enjoining his removal to a safe third country.

D. Petitioner should be required to post a bond in the event relief is granted.

Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states "The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added).

VI. Conclusion.

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 this 5th day of September, 2025.

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