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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Vienghkone Sikeo, Petitioner, v. John E. Cantu, et al., Respondents.	No. 2:25-cv-03191-PHX-SHD (CDB) **RESPONSE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

Respondents John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS"); Kristi Noem, Secretary of 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. 4). The Court entered a temporary restraining order on September 2, 2025 (Doc. 6) enjoining Petitioner's removal from the United States.

As discussed below, review in federal district court is not available for claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders," 8 U.S.C. § 1252(g), "arising from any action taken or proceeding brought to remove an alien," 8 U.S.C. § 1252(b)(9), or "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General

has made regarding [an alien's] detention or release," *Demore v. Kim*, 538 U.S. 510, 516 (2003) (discussing 8 U.S.C. § 1226(e)); *see also* 8 U.S.C. § 1252(a)(2)(B)(ii) (precluding review of other discretionary decisions and actions specified by statute); *Ven v. Rosa*, No. CV-25-03196-PHX-DWL, Order at Doc. 6 (D. Ariz Sept. 3, 2025) (denying motion for temporary restraining order finding that the Court lacked jurisdiction to enjoin removal and summarily dismissing habeas petition); *Duong v. Strafford Cnty. Dep't of Corr.*, No. CV-25-03190-PHX-JJT Order at Doc. 6 (D. Ariz. Sept. 2, 2025) (same).

The Court should dissolve the temporary restraining order and deny the preliminary injunction.

I. Factual background.

Petitioner is a citizen of Laos, having been born there in 1983. Ex. A, Decl. of Katherine Ormonde, at ¶ 5. In 1990, Petitioner was admitted to the United States as a refugee and later adjusted his status to that of a Lawful Permanent Resident. *Id.* at ¶ 6. In 2003, Petitioner was convicted in the State of California for "Unlawful Intercourse with a Minor." *Id.* at ¶ 7. His sentence was suspended, and he was placed on probation, but in 2005, he was sentenced to 365 days in jail for violating the terms of his probation. *Id.* That year, he was encountered by ICE officials at the Fresno County Jail. *Id.* at ¶ 8. An immigration detainer was lodged, and Petitioner was issued a Notice to Appear. *Id.* at ¶¶ 8, 9. In July 2005, an immigration judge ordered Petitioner removed to Laos. *Id.* at ¶ 11. In October 2005, Petitioner was released from ICE custody on an Order of Supervision. *Id.* at ¶ 12. In 2007, Petitioner was convicted in the State of California for "Possession of a Controlled Substance for Sale" and sentenced to 16 months in prison. *Id.* at ¶ 13. An immigration detainer was again lodged, and ICE arrested Petitioner in June 2009, but subsequently released him on an Order of Supervision. *Id.* at ¶ 15. In 2010, Petitioner was convicted in the State of California for "Possession of a Controlled Substance" and sentenced to 285 days in jail. *Id.* at ¶ 16. On June 25, 2025, ICE arrested Petitioner in California, served with the Notice of Revocation of Release, and transferred him in preparation for removal. *Id.* at ¶ 17. While Petitioner was detained, Petitioner was issued a travel document by the government of Laos and was allocated for a removal flight to Laos on September 1, 2025. *Id.* at ¶ 18. On

September 2, 2025, Petitioner was en route to Maryland to meet his connecting flight to Laos when this Court restrained his removal.

On September 2, 2025, Petitioner filed this habeas action asserting three causes of action: (1) his arrest and detention violated his Fifth Amendment procedural due process rights; (2) that his arrest and detention violated his Fifth Amendment substantive due process rights; and (3) that removal to a third country without adequate notice constitutes a violation of his Fifth Amendment due process rights and the Administrative Procedures Act. The habeas petition seeks a Court order: enjoining Respondents from removing Petitioner until a neutral adjudicator determines that he is a flight risk or danger to the community; declaring that Petitioner cannot be re-arrested unless the Government proves to a neutral adjudicator that he is a flight risk or a danger to the community by clear and convincing evidence; and enjoining his removal to any third country without at least 21-days advanced notice to Petitioner and his counsel at least 21 days before removal, a meaningful opportunity to raise fear-based claims, and his removal proceedings be reopened by either the Government or by Petitioner based on the outcome of his fear-based claim so he can challenge removal to a third country. Doc. 1 at 21-22. The same day, Petitioner also filed a Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 4) asking the Court to enjoin his transfer within the United States, his removal from the United States, and his continued detention. Doc. 4 at 22.[1]

II. The REAL ID Act strips this Court of jurisdiction over Petitioner's claim regarding execution of his removal order.

Petitioner seeks an order from this Court enjoining his removal asserting that his removal order is based on a criminal act (unlawful intercourse with a minor) that was later found not to constitute an aggravated felony or a crime of moral turpitude. The Court lacks jurisdiction to review Petitioner's removal order, and further lacks jurisdiction to enjoin Petitioner's removal to Laos—the country of his birth and the country to which he was ordered removed.

[1] References to page numbers refer to the page number appended by the CM/ECF system upon the filing of the document.

To the extent the habeas petition challenges the validity of Petitioner's removal order, the REAL ID Act eliminated district court habeas corpus jurisdiction over orders of removal and vested jurisdiction to review such orders exclusively in the courts of appeal. *Puri v. Gonzales*, 464 F.3d 1036, 1041 (9th Cir. 2006); *Iasu v. Smith*, 511 F.3d 881, 886-87) (9th Cir. 2007). Section 106(a)(iii) of the REAL ID Act states:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided for in subsection (e).

8 U.S.C. §1252(a)(5). The Act also contains a zipper clause, which requires that "questions of law and fact" arising from an order of removal be raised in a petition for review of that order brought before the court of appeals. 8 U.S.C. § 1252(b)(9); *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007).

In so far as the habeas petition challenges Petitioner's removal, the REAL ID Act stripped the courts of jurisdiction to hear claims contesting the Attorney General's decision to execute removal orders, providing:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

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, the Declaratory Judgment Act, the All Writs Act, or the Administrative Procedures 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).

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 8 US.C. § 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. Both are covered by the statute.") (emphasis in original) (quoted with approval in *Rauda*, 55 F.4th at 777); *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 challenges DHS's decision to remove him to Laos asserting that his removal order is invalid and that he was required to be given advanced notice of the Government's intent to remove him. At its core, the habeas petition challenges ICE's authority to execute Petitioner's final order of removal, but the Court lacks jurisdiction to

review that claim. This is true even though Petitioner has attempted to frame this action as one arising under statutes beyond those involving habeas petitions, including the Administrative Procedures Act. *See Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir.2012) (rejecting petitioner's efforts to characterize complaint as asserting independent claims under Administrative Procedure Act, and describing it as simply another effort to obtain judicial review of a removal order as to which district court lacked jurisdiction under Real ID Act); *see also Lopez v. Johnson*, No. SACV 15-57 ODW JC, 2015 WL 350369, at *2 (C.D. Cal. Jan. 23, 2015) (same).

The Court lacked jurisdiction to temporarily restrain Petitioner's removal to Laos and lacks jurisdiction to enter a preliminary injunction enjoining Petitioner's removal. The temporary restraining order must be dissolved.

III. Legal framework for preliminary injunctions.

An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24. Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the

second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is aptly described as a "heavy" one. *Id.*

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

IV. 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).

A federal district court is authorized to grant a writ of habeas corpus under 28 U.S.C. § 2241 where a petitioner is "in custody under or by color of the authority of the United States . . . in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.

§§ 2241(c)(1), (3). Ordinarily, once an alien has been deemed inadmissible and ordered removed, the Government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly referred to as the "removal period." However, another provision, 8 U.S.C. § 1231(a)(6), permits detention of an alien after the removal period for certain categories of aliens. Although the post-removal-period detention statute contains no time limit on detention, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court explained that the Fifth Amendment's Due Process Clause "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States. It does not permit indefinite detention." *Id.* at 689.

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

The purpose of § 1231(a)(6) detention is to effectuate removal. *See Demore*, 538 U.S. at 527 (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, the order of supervision issued to Petitioner in 2009 was revoked and he was re-detained on June 25, 2025, because the Government determined it was significantly likely to be able to effectuate his removal to Laos in the reasonably foreseeable future. And, prior to this Court's order temporarily restraining the Government from removing Petitioner, he had been detained for 69 days, which is well within the presumptively reasonable six-month period defined in *Zadvydas*.

2. The Due Process Clause does not entitled Petitioner to a pre-detention hearing.

In the Motion for a Temporary Restraining Order and Preliminary Injunction, Petitioner asserts, without citation to any authority, that "*prior to any redetention*, Mr. Sikeo must be provided with notice and a hearing before a neutral adjudicator at which DHS bears the burden of justifying his re-detention." Doc. 4 at 10 (emphasis in original). Petitioner also argues that because he has been permitted to remain in the United States despite his final order of removal, Respondents have "created a reasonable expectation that [he] would be permitted to live and work in the United States" creating "constitutionally protected liberty and property interests." Doc. 4 at 13. Similarly, Petitioner alleges Respondents' authority to re-detain him pursuant to 8 C.F.R. § 241.4(l) is "proscribed" by the due process clause because he has a liberty interest in his continued freedom. *See* Doc. 4 at 13. However, neither 8 C.F.R. § 241.4(l)(2) nor due process 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.")

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). For this Court to read one into the immigration custody statute would be to create a process that the current statutory and regulatory scheme does not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). 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, if re-arrested, is constitutionally adequate under 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, Petitioner faces little risk of erroneous deprivation. 8 U.S.C. § 1231(a)(6) unquestionably authorizes Petitioner's detention in order to execute his removal to Laos—the country to which he was ordered removed and to which he was in the process of being removed when this Court restrained his removal. Even if Petitioner had not been in the process of being removed to Laos and was in detention, Petitioner would have received post order custody reviews as provided for in the regulations governing immigration detention. *See* 8 C.F.R. § 241.13. These procedures are more than adequate to 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. Petitioner's proposed safeguard—a pre-deprivation hearing—adds little value to the system already in place in which he will receive periodic custody reviews to ensure his removal remains reasonably foreseeable. 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 "pre-deprivation" 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 and 241.13. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-detention hearing.

Because Petitioner's order of supervision was revoked in order to enforce Petitioner's 2005 removal order, and because nothing in the statutes, regulations, or due process required

a pre-revocation or pre-detention hearing before a neutral decisionmaker, Petitioner has failed to establish any likelihood of success on his claim that Respondents violated his due process rights by re-detaining him in advance of his removal.

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 was in the process of being removed to Laos—the country of his birth and the country to which he was ordered removed in 2005. Petitioner's speculation regarding the possibility of removal to a third country do not "rise to the level of 'immediate threatened injury' that is required to obtain a preliminary injunction." *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16, 2008) ("Plaintiff's argument of possible harm does not rise to the level of 'immediate threatened injury'"). Petitioner essentially argues that any continued detention necessarily will be detrimental because he is used to being at liberty. 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)).

"[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 because he is lawfully detained pursuant to a final executable removal order and his removal to Laos is imminent.

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 federal immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's undisputed criminal history and his likelihood of removal to Laos, the public and governmental interest in permitting his detention is significant. Thus, Petitioner has not established that he merits a preliminary injunction enjoining his removal (which this Court lacks jurisdiction to enter) or requiring his release from immigration detention.

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).

V. Conclusion.

Every habeas 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 habeas petition be advanced at the expense of prior, pending petitions. Here, the merits of Petitioner's claims are incredibly weak given that the Court lacks the authority to review his removal order or enjoin his removal, and because Petitioner is not likely to succeed on the merits of his claims related to his detention, which is authorized by 8 U.S.C. § 1231(a)(6). *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 4th day of September, 2025.

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