District Judge Marsha J. Pechman
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAIXON JOSE RAMIREZ TESARA,

Petitioner,

v.

CAMILLA WAMSLEY, Seattle Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); BRUCE SCOTT, Warden, Northwest ICE Processing Center; KRISTI NOEM, Secretary, United States Department of Homeland Security; PAMELA BONDI, United States Attorney General; UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No. 2:25-cv-01723-MJP-TLF

FEDERAL RESPONDENTS'[1] OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

While the circumstances surrounding Petitioner Daixon Jose Ramirez Tesara's departure from Venezuela are tragic, they do not alter the controlling legal framework that governs his current custody. The law is unequivocal: noncitizens apprehended at the border and placed in removal proceedings under 8 U.S.C. § 1225(b)(2) "shall be detained" for the duration of those

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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proceedings. Despite this command, U.S. Immigration and Customs Enforcement (ICE) exercised its discretion in February 2024 to grant Petitioner parole for 12 months. That parole expired in early 2025, months before his re-detention. Once that parole lapsed, the government's statutory obligation to detain him revived, and he has now lawfully been held under mandatory detention provisions for approximately three weeks.

Against this backdrop, Petitioner seeks a temporary restraining order (TRO) that would, in effect, secure the very relief he pursues through habeas corpus: release from mandatory detention. But longstanding precedent makes clear that habeas, not an emergency injunction, is the proper and exclusive vehicle for challenging the legality of immigration custody. A TRO is not a substitute for habeas; to allow otherwise would collapse the careful distinction between emergency equitable relief and the statutory habeas remedy.

Petitioner also fails to satisfy the stringent standard for extraordinary relief. He cannot demonstrate a likelihood of success on the merits because the relevant statute expressly requires detention and provides no right to notice of parole expiration or revocation. None of the cases Petitioner cites regarding notice address a situation where the petitioner's interim parole has indisputably expired, and thus his authorities provide no support for the relief he seeks. Indeed, Congress has mandated detention under §1225(b)(2) and denied notice for parole revocation or expiration, expressly foreclosing Petitioner's alleged right to notice here. Nor can he show irreparable injury: if detention alone sufficed, every habeas petitioner would automatically qualify for mandatory injunctive relief, a result flatly inconsistent with controlling law. And the equities and public interest strongly disfavor overriding Congress's mandatory detention scheme through the blunt instrument of a TRO.

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Most importantly, granting the requested injunction would improperly collapse final relief into preliminary relief. As the Supreme Court has cautioned, "[i]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). That is precisely what Petitioner asks this Court to do. For these reasons, and as further supported by the declaration of Daniel Strzelczyk, the Court should deny Petitioner's motion.

II. BACKGROUND

A. 8 U.S.C. § 1225(b)

Petitioner is an applicant for admission who is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). *See Matter of Yajure Hurado*, 29 I&N Dec. 216 (BIA 2025). Applicants for admission fall into one of two categories. Section 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and certain other aliens designated by the Attorney General in her discretion. Separately, section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Petitioner falls into this latter category.

Congress has determined that all aliens subject to section 1225(b) are subject to mandatory detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means of release is "temporary parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings*, 583 U.S. at 283.

B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A)

While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory detention, they may be subject to parole by the Attorney General or Department of Homeland

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Security (DHS), and that is not an issue that the Immigration Judge has authority to consider. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. 212.5(a) (2025) (designating who may exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney General may grant aliens detained under sections 235(b)(1) and (b)(2) temporary parole into the United States "for urgent humanitarian reasons or significant public benefit" (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)). This discretionary parole is statutorily required to be "temporary parole" under 8 U.S.C. § 1182(d)(5)(A), and the statute does not grant the Attorney General or DHS the discretion to grant indefinite parole to those subject to mandatory detention.

Federal regulations govern the expiration of parole and state that where the parole has expired, "no written notice shall be required." 8 C.F.R. § 212.5(e)(1).

C. Petitioner Ramirez Tesara

Petitioner is a native and citizen of Venezuela who illegally entered the United States without inspection near El Paso, Texas, on January 11, 2024. Compl. ¶ 23; Dkt. 3-1, pg. 2. He was apprehended and detained in El Paso. Dkt. 3-2, pgs. 2, 28. He was initially determined removable under 8 U.S.C. § 1225(b)(1) and found inadmissible under Immigration and Nationality Act (INA) section 212(a)(7)(A)(i)(I). Dkt. 3-1, pg. 2. Shortly thereafter, Petitioner notified ICE that he claimed fear of return to Venezuela. As a result, ICE referred his fear claim to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview. *See generally* Dkt. 3-2; 8 U.S.C. § 1225(b)(1)(A)(ii).

On January 26, 2024, an USCIS asylum officer interviewed Petitioner. The asylum officer found that he had not established a significant possibility of eligibility for asylum. Dkt. 3-2, pg. 6. Petitioner was then screened for whether he was eligible for statutory withholding of removal or relief under the Convention Against Torture (CAT). Dkt. 3-2, pg. 6; *see also Al Otro Lado v. Wolf*,

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952 F.3d 999, 1009 (9th Cir. 2020); 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 208.16(c); *see also* 8 C.F.R. § 208.30 (if the applicant is ineligible for asylum under the Rule, asylum officers must still refer the case to an Immigration Judge (IJ) for consideration of withholding and CAT relief "if the alien establishes, respectively, a reasonable fear of persecution or torture"). The standards differ for asylum, withholding, and CAT relief, but they involve largely the same set of facts. *Al Otro Lado v. Wolf*, 952 F.3d at 1009.

The asylum officer found Petitioner credible, and he was referred to an IJ for consideration of withholding and CAT relief. His detention authority changed to § 1225(b)(2); he was issued a Notice to Appear; and he was placed in removal proceedings under 8 U.S.C. § 1229a. *See* Dkt. 2, pg. 3; Dkt. 3-3, pg. 2; Strzelczyk Decl. ¶¶ 5, 9, and Exhibit A.

As part of his interview with the asylum officer, Petitioner was asked about any then-existing medical conditions or health problems. Dkt. 3-2, pg. 11. He reported that his left leg had a prosthesis. *Id.* But he told the asylum officer that this prosthesis was unrelated to the harm he suffered in Venezuela. *Id.*

On February 7, 2024, ICE granted Petitioner interim parole. Dkt. 3-4, pg. 2. The parole notice authorized parole for one year beginning from the date the notice was issued. *Id.* It stated parole would "automatically terminate . . . at the end of the one-year period unless ICE provides you with an extension at its discretion." *Id.* The parole notice further stated that the parole was entirely within ICE's discretion and could be terminated at any time and for any reason, and that parole was conditional on Ramirez Tesara's compliance with the terms and conditions of parole. *Id.*

Following his release on parole, Petitioner relocated to Portland, Oregon and reported to the ICE office in Portland. Strzelczyk Decl. ¶ 7; Dkt. 3-6, pgs. 2-3. Between February 7, 2025 and

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August 14, 2025, Petitioner had approximately 40 violations of the terms of his release. Strzelczyk Decl. ¶ 7; *but see* Dkt. 4 ¶ 4. Despite these violations, he was not detained. On August 14, 2025, Petitioner failed to attend a meeting with Intensive Supervision Appearance Program (ISAP).[2] At the time, he told ISAP that he missed the meeting because he "didn't have cellular data" on his phone, had "reloaded [his] line," and just seen the message 48 minutes past the meeting time. Dkt. 3-10, pg. 8; *but see* Dkt. 4 ¶ 6. Following this exchange, ISAP sent a message stating, "You should show up to the ISAP office tomorrow 8/15/2025 at 10:00." *Id.* He was then instructed to report to ICE, at which point he was detained on August 18, 2025. Dkt. 4, ¶ 8; Strzelczyk Decl. ¶ 7. He was subsequently transferred to the Northwest ICE Processing Center in Tacoma, Washington, where he is presently detained. Strzelczyk Decl. ¶ 8.

Petitioner is scheduled for a master calendar hearing with an Immigration Judge on September 16, 2025. *Id.* ¶ 10.

III. LEGAL STANDARD

A TRO 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); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (the TRO standard is "substantially identical" to preliminary injunction standard). A petitioner must establish: (1) "that he is likely to succeed on the merits"; (2) "that he is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "that the balance of equities tips in his favor"; and (4) "that an injunction is in the public interest." *Winter*, 555 U.S. at 20. Alternatively, a petitioner

[2] ISAP is Alternatives to Detention (ATD) ICE program that monitors certain immigrants using electronic monitoring devices, check-ins, and a mobile app called SmartLINK to ensure compliance with immigration obligations, such as attending court hearings. *See* ICE's website at ice.gov, U.S. Immigration and Customs Enforcement Memorandum to Field Office Directors dated May 11, 2005, *available at*: https://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf (last visited September 10, 2025).

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who shows only that there are "serious questions going to the merits" may satisfy the *Winter* requirements by establishing that the "balance of hardships [] tips sharply towards [the petitioner]," and that the remaining two *Winter* factors are met. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

Preliminary relief is meant to preserve the status quo pending final judgment, rather than obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). When preliminary relief would change the status quo and "order a responsible party to take action," it is "particularly disfavored." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009). Indeed, "[i]n general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted).

Here, rather than preserving the status quo, Petitioner seeks mandatory injunctive relief in the form of an order requiring his immediate release.

IV. ARGUMENT

The Court should deny Petitioner's request for a TRO because he has failed to clearly establish a likelihood of success on the merits on his due process claim or imminent irreparable harm. Additionally, Petitioner has not established that the public interest weighs decidedly in his favor.

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On September 8, 2025, Petitioner filed a Petition for Writ of Habeas Corpus asserting due process violations under the Fifth Amendment. *See* Dkt. 1. The habeas petition seeks Petitioner's immediate release from custody, an order prohibiting his transfer outside of this District, an order prohibiting his deportation, an order prohibiting his re-detention without a hearing to contest that re-detention before a neutral decisionmaker, and an award of costs and reasonable attorney's fees. Dkt. 1, pgs. 11-12, Prayer for Relief. That same day, Petitioner filed this Motion for TRO reiterating his claims and seeking the same relief on an emergency basis. Dkt. 2.

A. Petitioner 's TRO Should Be Denied Because It Improperly Seeks Final Relief.

As a threshold matter, Petitioner's TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits; rather, it improperly seeks the ultimate relief he demands in this case. *Compare* Dkt. 1 *with* Dkt. 2. The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software*, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984).

Here, the TRO and habeas petition both seek the same relief: his immediate release from custody, an order prohibiting his transfer outside of this District, and an order prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. Dkt. 1, pgs. 11-12; Dkt. 2. By seeking the same relief in both motions, Petitioner is particularly burdening this Court and trying to get two bites of the apple.

The Ninth Circuit has rejected Petitioner's approach stating, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d

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974, 978 (9th Cir. 1992); *see also* Doe v. Bostock, No. C24-0326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024). Petitioner's TRO should be denied for these same reasons.

B. Petitioner Does Not Satisfy the Requirements for Preliminary Relief.

1. Petitioner is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241. The statute governing parole clearly states that Petitioners need not be given notice following parole expiration or revocation. Therefore, this claim lacks merit.

a. Petitioner's detention is lawful and his due process rights were not violated.

Petitioner has not shown that he is in immigration custody in violation of the Constitution, law, or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detained him pursuant to 8 U.S.C. § 1225(b), which mandates detention of applicants for admission in removal proceedings. Individuals detained under section 1225(b), including Petitioner, are not entitled to an individualized bond hearing.

The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time limit on the length of detention and whether such aliens detained under this statutory authority have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Court rejected both arguments, holding that Section 1225(b) mandates detention during the pendency of removal proceedings and provides no entitlement to a bond hearing. *See id.* at 303 ("Nothing in the statutory text imposes any limit on the length of detention."). The Court further clarified that Section 1225(b) detainees

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may be released only through discretionary parole under 8 U.S.C. § 1182(d)(5). *Id.* at 300. While *Jennings* forecloses any statutory or categorical constitutional right to a bond hearing under Section 1225(b), it did not reach the issue of whether prolonged detention without such a hearing could, in individual cases, raise a due process concern. Petitioner's detention without court-ordered a bond hearing does not violate his Fifth Amendment due process rights.

Further, when Petitioner was detained, his interim parole had expired, and no extension had been given. Strzelczyk Decl. ¶ 9. Petitioner's parole was granted on February 7, 2024. Dkt. 3-4, pg. 2. The parole notice *provided* the applicant *notice* that his parole authorization was "valid for one year" beginning from the date the parole notice was issued. *Id.* Therefore, Petitioner was on longstanding notice that his parole would expire on February 7, 2025. His parole was permitted on his *express consent* to the terms and conditions of his release—including the temporary one-year term for which it was granted. *Id.* His detention in August 2025, months after this date, could not therefore come as a surprise. In the situation where the noncitizen's parole expires, federal regulations clearly dictate no notice is required. 8 C.F.R. § 212.5(e)(1). Petitioner's detention in August 2025 therefore occurred both after more than 18 months' notice and with his prior consent. These circumstances do not constitute a violation of his due process rights.

b. Petitioner Seeks Unlawful Relief.

Petitioner's request for relief goes beyond what is permissible by statute. The Court should not issue an order prohibiting Petitioner's re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. *See e.g., Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *4 (E.D. Cal. June 30, 2025); *Trinh v. Homan*, No. 18-cv-00316-CJC-GJS, 2018 WL 11184556, at * 8 (C.D. Cal. Oct. 18, 2018) (finding the Supreme Court did not imbue the courts with expansive authority to interfere with the government's ability to effectuate federal

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immigration law) (citing *Zadvydas*, 533 U.S. at 659).

Petitioner is also not entitled to an order prohibiting ERO from transferring him outside of the District or deporting him for the duration of this proceeding. Dkt. 1, pgs. 11-12, at Prayer for Relief. The Court has no jurisdiction to bar execution of a future removal order. 8 U.S.C. § 1252(g). The INA also grants the discretion over the placement and housing of detained aliens to the Executive Branch. Specifically, 8 U.S.C. § 1231(g)(1) "gives both 'responsibility' and 'broad discretion' to the Secretary 'to choose the place of detention for deportable aliens.'" *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022) (citing *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986), amended by 807 F.2d 769 (9th Cir. 1986)); *see e.g., Y.G.H. v. Trump*, No. 1:25-CV-00435-KES-SKO, 2025 WL 1519250, at *9 (E.D. Cal. May 27, 2025). As such, the Court should deny Petitioner's requested relief.

2. Petitioner has not shown irreparable harm.

Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

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Petitioner asks this Court to find that his detention pursuant to section 1225(b) restrains his physical liberty allegedly without just cause and thus constitutes irreparable injury. Dkt. 2-1, pg. 1. But his "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012); *see also Taha v. Bostock*, No. C25-649-RSM, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025) ("The Court agrees with Defendants that Petitioner's 'irreparable harm-based argument begs the constitutional questions presented in his petition by assuming that [P]etitioner has suffered constitutional injury[,]' and his emotional harm from this 'loss of liberty' is 'common to all' like Petitioner."); *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) ("[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm[.]").

Petitioner also claims irreparable harm based on injury to his left ankle, but his conflicting statements make the veracity of these claims unreliable and therefore insufficient for a finding of irreparable harm sufficient to warrant emergency relief. In January 2024, Petitioner reported to a USCIS asylum officer he had a prosthesis on his left leg unrelated to any harm suffered in Venezuela. Dkt. 3-2, pg. 11. On the other hand, in his declaration submitted to this Court on September 5, 2025, Petitioner reported that the National Police of Venezuela ran him over with a car, resulting in injuries to his left ankle. Dkt. 4 ¶¶ 1, 10. Following this injury, Petitioner feared continued violence and torture at the hands of the Venezuelan government. *Id.* ¶ 1. During this timeframe, he obtained surgical intervention to address his injuries, including surgery on his left leg to "place bars and screws into my leg and ankle" and "a rod in [his] bone on the back side of [his] left leg from about [his] knee to [his] ankle." *Id.* He claims that when ICE officers detained him in August 2025, they applied the ankle restraints too tightly, resulting in ongoing extreme pain

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in his left leg that persists through his detention. *Id.* ¶ 10. To the extent Petitioner experiences pain, he has demonstrated a willingness and ability to seek medical care in detention. *Id.* ¶ 14. Medical staff at the NWIPC are available to address his needs while in custody.

Petitioner has not shown extraordinary circumstances warranting emergency relief.

3. The balance of the interests and public interests favor the Government.

It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders). This public interest outweighs Petitioner's private interest here. Petitioner asks the Court to declare his detention unconstitutional, despite the Government's valid reasons and statutory bases for detaining him. He does not contest that he entered the country unlawfully and is in removal proceedings. Accordingly, this Court should deny his Motion.

V. CONCLUSION

For the foregoing reasons, Petitioner has not satisfied his high burden of establishing entitlement to mandatory injunctive relief, and his Motion should be denied.

DATED this 10th day of September, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,801 words, in compliance with the Local Civil Rules.

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