CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
DOUGLAS JOHNS (CABN 314798)
Assistant United States Attorney

60 South Market Street, Suite 1200
San Jose, California 95113
Telephone: (415) 846-8947
FAX: (408) 535-5081
Douglas.Johns@usdoj.gov

Attorneys for Respondents-Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Hiren Jagdish PATEL, Petitioner-Plaintiff, v. Sergio ALBARRAN, Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security[1]; Todd LYONS, Acting Director, Immigrations and Customs Enforcement, U.S. Department of Homeland Security; Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and Pam BONDI, in her Official Capacity, Attorney General of the United States; Respondents-Defendants.	CASE NO. 25-cv-07667-WHO **RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** Date: September 22, 2025 Time: 10:00 a.m. Courtroom: Zoom Webinar Honorable William H. Orrick United States Senior District Judge

[1] Sergio Albarran is automatically substituted for Polly Kaiser as a defendant in this matter pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

CONSTITUTION

FEDERAL STATUTES

FEDERAL REGULATIONS

CALIFORNIA STATUTES

Respondents, Sergio Albarran, Todd Lyons, Kristi Noem, and Pam Bondi (collectively, "Respondents"), respectfully submit the following opposition to Petitioner, Hiren Jagdish Patel's ("Petitioner"), motion for a temporary restraining order. *See* Pet.'s Mot. for TRO ("Mot."), ECF No.

I. INTRODUCTION

In this habeas case, Petitioner seeks an order enjoining Respondents from re-arresting and re-detaining him pending further order of this Court. *See* Mot. at 1, 21. After Petitioner was convicted of an aggravated felony for attempting to perform a lewd or lascivious act on a child under the age of fourteen and distributing harmful matter to a minor electronically, an Immigration Judge ordered Petitioner removed from the United States. He is currently living in the United States with a final order of removal after his conviction of an aggravated felony. Since being charged with removability in 2012 as a result of his felony conviction, Petitioner litigated his removal case before the Immigration Court, Board of Immigration Appeals, and the United States Court of Appeals for the Ninth Circuit, all of which affirmed his final order of removal. Petitioner has been afforded more than sufficient process to challenge his removal from the United States.

With all that said, Petitioner is not in custody and has not been re-detained by U.S. Immigration and Customs Enforcement ("ICE") since 2012. There is no evidence that ICE intended to re-arrest or re-detain him on a particular date. Petitioner cites nothing to the contrary in either his writ of habeas corpus or motion for a temporary restraining order. *See generally* Mot. and Pet. For Writ of Habeas Corpus ("Pet"), ECF No. 1. Notwithstanding this lack of evidence, Petitioner claims that it is "highly likely" that he will be arrested and detained. *See* Mot. at 2, 7. Although Petitioner's claims are speculative, he remains subject to mandatory detention as an alien with an outstanding removal order after a conviction for an aggravated felony for crimes involving sexual misconduct and minors.

The Court should deny Petitioner's motion for a temporary restraining order for several reasons. First, this Court lacks jurisdiction. Petitioner's claim is not a cognizable habeas claim, as it seeks to enjoin his arrest or require a pre-deprivation hearing, not a release from custody. *See* Mot. at 1, 21; *see also* Mot. at 2-7 (confirming that Petitioner is not in custody). Second, several provisions of the Immigration and Nationality Act ("INA") deprive this Court of jurisdiction over Petitioner's claims seeking to delay his removal while ICE complies with additional procedures. For instance, 8 U.S.C. § 1252(g) strips federal courts of jurisdiction over "any cause or claim" arising from the execution of removal orders, which Petitioner's claims plainly do.

Next, Petitioner has not shown a likelihood of success on the merits of his claims. Petitioner has no due process right to any further procedures, including a pre-detention or pre-deprivation hearing, regarding his removal from the United States. His detention is statutorily authorized by 8 U.S.C. § 1231(a)(6) to execute his removal from the United States. He will receive sufficient process during any such detention via the Post Order Custody Regulations in 8 C.F.R. § 241.4, which set forth specific criteria that should be weighed in considering whether to recommend further detention beyond the removal period set in 8 U.S.C. § 1231. There is simply no basis to conclude that Petitioner is entitled to any additional process during or before any hypothetical detention to execute his valid, final order of removal.

Petitioner fails to carry his high burden for the Court to grant his motion for a temporary restraining order. He does not want to be detained and articulates harms that detention causes him. But Petitioner is subject to a final order of removal after he was convicted of an aggravated felony involving children, and Respondents are taking steps to remove him. He has not established that "there is no significant likelihood of removal in the reasonably foreseeable future," as required to establish a claim of indefinite detention. Petitioner's claims are speculative and not ripe for adjudication. Again, Petitioner is not in custody, and he has not been re-detained. Although Petitioner remains subject to mandatory detention, there is no evidence that ICE intended to take him into custody on any particular date. Petitioner has cited none. Accordingly, Petitioner's request for a temporary restraining order should be denied.

II. LEGAL FRAMEWORK

A. Removal Proceedings.

Under the INA, several classes of aliens are "inadmissible" and therefore "removable." *See* 8 U.S.C. §§ 1182, 1229a(e)(2)(A). These include aliens that lack a valid entry document "at the time of application for admission," 8 U.S.C. § 1182(a)(7)(A)(i)(I), when they arrive at a "port of entry," or when they are found present in the United States, 8 U.S.C. §§ 1225(a)(1), (3). If an alien is inadmissible, the alien is subject to removal from the United States. In removal proceedings pursuant to 8 U.S.C. § 1229a, an alien may attempt to show that he or she should not be removed. Among other things, an eligible alien may apply for asylum on the ground that he or she would be persecuted on a statutorily protected ground if removed to a particular country. 8 U.S.C. §§ 1158, 1229a(b)(4); 8 C.F.R. § 1240.11(c).

Under 8 U.S.C. § 1231(a)(5), the United States Department of Homeland Security ("DHS") may reinstate a prior order of removal for an alien it finds "has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal." 8 U.S.C. § 1231(a)(5). When DHS reinstates a removal order, the "prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." *Id.*

If an alien expresses fear of persecution or torture, the alien may seek withholding or deferral of removal under 8 U.S.C. § 1231(b)(3) or regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a treaty that addresses the removal of aliens to countries where they would face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822; 8 C.F.R. 208.31, 241.8(e). "Torture" is defined as an "extreme form of cruel and inhuman treatment," which intentionally inflicts "severe pain or suffering" on another for an improper purpose, and is performed "at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity." 8 C.F.R. 208.18(a)(1) and (a)(2); *see, e.g.*, *Del Carmen Amaya De Sicaran v. Barr*, 979 F.3d 210, 218-219 (4th Cir. 2020) (torture is a "high bar"). If an asylum officer determines that the alien has established a reasonable fear of persecution or torture, the alien is referred to the Immigration Judge for consideration of withholding of removal only (aliens with reinstated orders of removal are not eligible for asylum). 8 C.F.R. § 208.31(e). In withholding-only proceedings, the Immigration Judge is limited to consideration of eligibility for withholding and deferral of removal. 8 U.S.C. § 1231(a)(5) (providing that an alien subject to reinstatement "is not eligible and may not apply for any relief under [the INA]"); 8 C.F.R. § 1208.2(c)(3)(i) ("The scope of review in [withholding-only] proceedings . . . shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal.").

Indeed, during withholding-only proceedings, "all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief." *Id.*

B. Habeas Corpus

Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The custody requirement may be satisfied if a Petitioner is not actually confined, but is nonetheless subject to significant restraint on liberty "not shared by the public generally." *Jones v. Cunningham*, 371 U.S. 236, 239–40 (1963).

C. Temporary Restraining Orders and Preliminary Injunctions

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

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) and *Winter*, 555 U.S. at 20). 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. 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.*

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 before judgment. *Sierra On-Line, Inc. v. Phx. Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Accordingly, where a petitioner seeks mandatory injunctive relief—seeking to alter the status quo—"courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319–20 (9th Cir. 1994). A mandatory injunction "goes well beyond simply maintaining the status quo *pendente lite* and is particularly disfavored." *Id.* at 1320 (internal quotations and alteration omitted). A mandatory injunction "should not be issued unless the facts and law clearly favor the moving party." *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979). Mandatory injunctions "are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* at 1115. Accordingly, the party seeking a mandatory injunction "must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed." *Garcia,* 786 F.3d at 740 (emphasis in original).

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A temporary restraining order or preliminary injunction is intended to preserve the status quo until the case can be judged on the merits. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

III. FACTUAL BACKGROUND

A. Petitioner Committed Crimes Against Children, and He Was Convicted of an Aggravated Felony for Crimes Involving Sexual Misconduct and Children.

Petitioner is a native and citizen of India. *See* Declaration of Gwendolyn Ng ("Ng Decl.") at ¶ 6. On July 5, 2000, Petitioner was convicted of violating California Penal Code § 484 for petty theft. *See id.* at ¶ 7. He served one day in state custody. On April 8, 2004, Petitioner adjusted his immigration status to a lawful permanent resident through his spouse. *See id.* at ¶ 8.

On June 1, 2007, Petitioner was convicted of violating California Penal Code § 664 and California Penal Code § 288(a). *See id.* at ¶ 9. Section 288(a) states that "a person who willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony." Cal. Penal Code § 288(a).[2] In addition, Petitioner was convicted of violating California Penal Code § 288.2(b) for attempting to distribute or exhibit harmful matter to a minor electronically. *See id.*

Petitioner was sentenced to three years of probation and four months in a county jail. *See id.* One of Petitioner's probation conditions was that he was prohibited from participating in "chat rooms" and using the Internet for social websites. *See* Ng. Decl. at ¶ 5, Ex. 5. The state court also prohibited Petitioner from being employed or performing volunteer work in an organization that involves the supervision of children. *See id.*

B. Petitioner Was Ordered Removed from the United States and Was Unsuccessful in Appealing His Removal from the United States.

On March 24, 2012, ICE detained Petitioner under the INA and charged him with removability based on his prior conviction of an aggravated felony. *See id.* at ¶ 10. That same day, ICE released Petitioner until his removal proceedings were adjudicated because of his medical condition. *See id.* at ¶ 11. During his removal proceedings, Petitioner applied to adjust his immigration status with the Immigration Judge. *See id.* at ¶ 12. Petitioner also sought a waiver of inadmissibility for his conviction. *See id.* On June 8, 2017, the Immigration Judge granted Petitioner's re-adjustment with the accompanying waiver. *See id.* at ¶ 13. DHS subsequently appealed the Immigration Judge's decision. *See id.* On May 21, 2018, the Board of Immigration Appeals ("Board") sustained DHS' appeal. *See id.* Petitioner appealed the Board's decision denying his relief to the United States Court of Appeals for the Ninth Circuit. *See id.* at ¶ 14.

On March 20, 2019, the Ninth Circuit dismissed Petitioner's appeal and found that it lacked jurisdiction to review the Board's decision. *See* Ng. Decl. at ¶¶ 14, 5, Ex. 3. In its order dismissing Petitioner's appeal, the Ninth Circuit terminated his temporary stay of removal. *See id.*

---

[2] California Penal Code § 664 criminalizes an attempt to commit a crime. *See generally* Cal. Penal Code § 664.

After the Ninth Circuit denied his requested relief, Petitioner moved to reopen his proceedings with the Board. *See id.* at ¶ 15. In February 2023, Petitioner's motion and subsequent appeal were denied. *See id.* On December 4, 2024, ICE served Petitioner with a Form-I-220B, Order of Supervision. *See* Ng. Decl. at ¶¶ 16, 5, Ex. 4.

In sum, Petitioner is a convicted felon for crimes committed against children who fully litigated his removal case before the Immigration Court, Board, and Ninth Circuit all of which affirmed his removal order. *See id.* at ¶¶ 9, 16. As of the filing of Respondents' opposition, Petitioner has an outstanding removal order and remains subject to mandatory detention. *See id.* at ¶ 18.

C. Petitioner's Habeas Petition and Motion for Temporary Restraining Order.

Petitioner commenced this action on September 9, 2025, by filing a petition for writ of habeas corpus, ECF No. 1, and moving this Court *ex parte* for a temporary restraining order, ECF No. 2. The same day, the Court ordered Respondents to file a response to Petitioner's motion by September 17, 2025. *See* Order Regarding Mot. for TRO at 1, ECF No. 5. The Court set a remote hearing on Petitioner's motion for September 22, 2025. *See id.* The Court enjoined Respondents from removing Petitioner pending the issuance of a ruling on Petitioner's motion. *See id.* at 2.

IV. THE COURT LACKS JURISDICTION TO STAY PETITIONER'S REMOVAL

A. Petitioner's Claim Is Not a Cognizable Habeas Petition Because It Does Not Seek a Release from Custody.

Habeas relief is an appropriate request when an individual is detained and requesting release from that detention. U.S. CONST. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) ("The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody "); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody."). An individual does not need to be in actual physical custody to seek habeas relief; the "in custody" requirement may be satisfied where an individual's release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted "custody" for habeas purposes). Even if Petitioner were to meet the "in custody" requirement because he is subject to certain conditions of release—such as reporting to an ICE office—this habeas petition does not purport to challenge that custodial arrangement or secure his release from any *present* "custody." Indeed, Petitioner has sworn that he has "complied with all conditions of his supervised release for the past thirteen years since his initial arrest and after his removal order in 2019." *See* Mot. at 5, 12, 13 *Cf. Doe v. Garland*, 109 F.4th 1188, 1191–93 (9th Cir. 2024) (petition seeking individualized bond hearing sought conditional release from custody). In sum, Petitioner is not in physical custody and is not challenging restraints on his freedom. Thus, Petitioner does not seek a remedy that sounds in habeas. Rather, Petitioner seeks an injunction to prevent his future arrest, the possibility of future detention, and removal from the United States.[3]

B. 8 U.S.C. § 1252(g) Bars Review of Petitioner's Challenges 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," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999).

Petitioner's claims arise from his concerns about the execution of his removal order. Indeed, his petition seeks to require ICE to provide him with additional procedures not authorized by statute or regulation prior to his removal or even any arrest to effectuate his removal. *See* Mot. at 1, 14, 17; *see also* Pet's Proposed Order Granting Mot. for TRO at 2, ECF No. 2-1. Even if the detention decision were reviewable in District Court, the INA governs the detention and release of noncitizens during and

---

[3] To the extent Petitioner's claim is considered a cognizable habeas claim based on the fiction of seeking release from his hypothetical future detention, this Court would not have jurisdiction to consider that claim because any such detention would not be in the Northern District of California. *See* https://www.ice.gov/detention-facilities (filtered by California, San Francisco Field Office) (last visited Sept. 14, 2025); *Doe*, 109 F.4th at 1199 ("core habeas petitions must be filed in the district of confinement").

following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). 8 U.S.C. § 1231(a)(6) provides that an alien ordered removed who is inadmissible under section 1182, removable under 1227(a)(1)(C), (a)(2), or (a)(4), or who has been determined to be a risk to the community or unlikely to comply with the order of removal "may be detained beyond the removal period."

Here, Petitioner concedes that he has been ordered removed from the United States, and that he has an outstanding removal order. *See* Mot. at 1, 3, 12. Petitioner does not identify any basis for contesting his removal from the United States. And as discussed above, claims contesting removal in District Court are generally barred by 8 U.S.C. § 1252(g), which permits the government to enforce final removal orders without judicial review except in certain narrowly delimited circumstances not present here. To the extent a non-citizen wishes to contest such final removal orders, they have other legal process available—not a District Court lawsuit

Numerous courts of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of removal—even temporarily to assert other claims to relief—are barred by Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred plaintiff's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., ICE*, 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 plaintiff's argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. U.S.*, 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").

Petitioner's claims are similar to the alien plaintiff's claims in *Rauda* wherein the Ninth Circuit held that a district court lacked jurisdiction to stay removal while the plaintiff pursued his immigration proceedings. *Rauda*, 55 F.4th at 775–78. In *Rauda*, like this case, a Salvadoran immigrant had pled guilty to charges of being involved in a gang shooting. *Id.* at 775-76. After he was released from prison, an immigration judge ordered him removed to El Salvador. *Id.* at 776. After the political situation in El Salvador changed, he moved to reopen his immigration case and then filed a habeas petition in district court to obtain a stay of removal while his motion to reopen was being considered. *Id.* The district court denied his motion for a temporary restraining order on the grounds that 8 U.S.C. § 1252(g)'s jurisdictional limits barred his claims. *Id.* The Ninth Circuit affirmed and explained: "No matter how [plaintiff] frames it, his challenge is to the Attorney General's exercise of his discretion to execute Matias's removal order, which we have no jurisdiction to review." *Id.* at 778.

Here, Petitioner also seeks to stay his removal pending further immigration court proceedings. *See* Mot. at 1, 2; *see also* Decl. of Avantika Shastri ¶ 7, Ex. A. The Court should follow the Ninth Circuit's *Rauda* decision and deny his claims. Petitioner is a convicted felon with an outstanding removal order and subject to mandatory detention. *See* Ng Decl. ¶¶ 9, 18.

C. 8 U.S.C. §§ 1252(a)(5) and (b)(9) Channel All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals.

Even if Section 1252(g) of the INA did not bar review—which it does—Sections 1252(a)(5) and 1252(b)(9) of the INA bar review in this Court. By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute explicitly excludes review via "section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. *Id.* (emphasis added).

Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all" claims arising from deportation proceedings to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. Under Ninth Circuit law, "[t]aken together, §[§] 1252(a)(5) and [(b)(9)] mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and- practices challenges, through the PFR process whenever they 'arise from' removal proceedings").

Here, the gravamen of Petitioner's habeas petition is that he seeks to prevent ICE from detaining and arresting him to execute his removal order. *See generally* Mot. Therefore, Petitioner's claims are barred under Sections 1252(a)(5) and (b)(9) because they "aris[e] from . . . proceeding[s] brought to remove an alien from the United States" and further challenge "any *action taken* . . . to remove an alien from the United States." 8 U.S.C. § 1252(b)(9) (emphasis added). Rather than petition the relevant court of appeals, which Petitioner previously did and lost, Petitioner chose to file a habeas petition in this Court to challenge his removal. *See generally* Mot.; *see also* Pet. That is precisely what the INA forbids. *See J.E.F.M.*, 837 F.3d at 1031.

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.

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 [elements].'" *Garcia*, 786 F.3d at 740 (*en banc*) (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)).

The Court should deny Petitioner's motion for a temporary restraining order because Petitioner has not demonstrated likelihood of success on the merits. Nor has Petitioner raised "serious questions" about the merits. Petitioner has not been detained since 2012, and he does not have the due process right to a pre-deprivation hearing. *See generally* Mot. Petitioner is asking the Court to create a procedure that does not exist in any statute or regulation by requiring a pre-deprivation hearing while he is not in custody.

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

Here, with a valid final order of removal, ICE may re-detain under 8 U.S.C. § 1231(a)(6), for post-removal-period detention, as well as under 8 U.S.C. §1357 (a), general immigration enforcement authority. Notwithstanding, Petitioner's claim is premature, as he has not been re-arrested,[4] and, even if he were, it would be constitutional to re-detain him. The Supreme Court has unambiguously upheld detention pending an alien's removal. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (an alien is not entitled to habeas relief after the expiration of the presumptively reasonable six-month period of detention under § 1231(a)(6) unless he can show the detention is "indefinite"—*i.e.*, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."). Here, Petitioner, who has not been detained, cannot show that he is subject to prolonged detention or that his removal is unlikely to occur in the reasonably foreseeable future. Petitioner even concedes that he has not been detained since 2012. *See* Mot. at 1, 5, 11, 12.

The purpose of Section 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 the extent Petitioner ever had a procedural due process interest in his release, that interest terminated when the Immigration Judge ordered his removal. *See* Ng Decl. ¶¶ 13-16. Should ICE detain Petitioner in the future, which at this juncture remains speculative but permissible, his detention would be authorized under Section 1231(a)(6) to effectuate his removal to a third country unless and until there was "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 690–92, 699.

---

[4] To be reviewable under the APA, the decision under review must be a "final agency action." 5 U.S.C. § 704. This finality requirement is a "prerequisite to review" of any APA claim. *Dalton v. Specter,* 511 U.S. 462, 469 (1994). A district court lacks jurisdiction to review an APA claim absent final agency action. *Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1104 (9th Cir. 2004). Petitioner has filed this action in anticipation of a possible future action; he has failed to identify any agency action or failure to act that has actually occurred.

Petitioner suggests that any future detention would be "prolonged" and "unconstitutional" because he was previously detained by ICE "for years." *See* Mot. at 11. Petitioner further suggests that any future detention would violate the standard prescribed by the Supreme Court in *Zadvydas.* It is important to emphasize how the Supreme Court ruled in *Zadvydas* and what the exact constitutional standard is:

> After 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. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, 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. Thus, under *Zadvydas*, the noncitizen "may be held in confinement until it has been determined that there *is no significant likelihood of removal in the reasonably foreseeable future.*" *Id.* (italic emphasis added). The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that "he is stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Courts therefore properly deny *Zadvydas* claims under such circumstances and find that a "habeas petitioner's assertion as to the unforeseeability of removal, supported only by the mere passage of time, [is] insufficient to meet the petitioner's burden to demonstrate no significant likelihood of removal under the Supreme Court's holding in *Zadvydas." Muthalib v. Kelly*, No. SA CV 16-02186-KS, 2017 WL 11696616, at *3 (C.D. Cal. Apr. 19, 2017) (collecting cases). "This is particularly so where the only impediment to removal is the issuance of the appropriate travel document." *Id. (citing Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 3710200 (C.D. Cal. June 1, 2016), *report and recommendation adopted,* No. LA CV 16-01673, 2016 WL 3704675 (C.D. Cal. July 11, 2016)). That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).

Ultimately, Petitioner is subject to *post*-final order detention under Section 1231(a)(6). The purpose of that detention is to effectuate removal—not to ensure presence at pending removal proceedings, as might be the case with other statutes. Therefore, Petitioner has no basis to assert a procedural due process right to his prior bond, or for an additional hearing, because he has a final order of removal, and any detention would be to effectuate his removal. Moreover, there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. *See* Ng Decl. ¶ 18. Petitioner has an outstanding removal order that Respondents intend to execute. *See id.* Respondents intend to timely remove Petitioner in the consistent with the principles articulated in *Zadvydas*. Issuing a temporary restraining order, however, as mandatory injunctive relief to disrupt the status quo is not appropriate.

2. Petitioner Is Not Entitled to a Due Process or Pre-Deprivation Hearing.

The Due Process Clause does not prohibit ICE from re-detaining Petitioner, and there is no statutory or regulatory requirement that entitles Petitioner to a "pre-deprivation" hearing. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. The Supreme Court has warned courts against reading additional procedural requirements into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). 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. *See* Mot. at 13-17. *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, or 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 in the circumstances and no additional process is required. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews,* 424 U.S. at 335. Thus, Petitioner's reliance on *Mathews* is misplaced. *See* Mot. at 13-18.

The first *Mathews* 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. 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-re-arrest hearing. *See generally* Mot.

The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens including Petitioner face little risk of erroneous deprivation. There is no risk of erroneous detention because Petitioner is subject to a final removal order, and Section 1231(a)(6) unquestionably authorizes Petitioner's detention to execute his final removal.

And, if Petitioner were to be re-arrested and taken into custody, ICE would be required to apply additional procedural safeguards to prevent erroneous deprivation of rights under 8 C.F.R. § 241.4. These regulations require, among other things, periodic custody reviews in which Petitioner will have the opportunity to submit documents in support of his release to include documentation about flight risk and dangerousness. *See generally* 8 C.F.R. § 241.4(e)–(f) (listing factors to be considered in custody determinations). These procedures are more than adequate and unquestionably provide Petitioner notice and opportunity to be heard at the start of and throughout any future 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 hearing before a neutral adjudication or decisionmaker—adds little value to the system already in place in which he will receive periodic reviews to ensure his removal remains reasonably foreseeable and in which the entire purpose of his detention is to effectuate his removal.

Significantly, Petitioner has already been afforded sufficient process and safeguards during the extensive litigation of his immigration proceedings. *See* Ng Decl. ¶¶ 12-16. After Petitioner was charged with removability under the INA is litigated his immigration claims. *See id.* Petitioner applied to re-adjust his immigration status and sought a waiver of inadmissibility. *See id.* ¶ 12. Both the Board and the Ninth Circuit denied Petitioner's requested relief. *See id.* ¶ 14. Petitioner's attempts to re-open his immigration proceedings with the Board were also unsuccessful. *See id.* ¶ 15. Petitioner not only was provided sufficient process and opportunity to litigate his removal case, but actually did fully litigate his removal case before the Immigration Court, Board, and Ninth Circuit. *See id.* ¶ 16. The Immigration Court, Board, and Ninth Circuit all affirmed his removal order. *See id.*

Petitioner is a convicted felon subject to a final order of removal. *See* Ng Decl. ¶¶ 9-16. The effect of the requested pre-deprivation hearing would be to delay execution of his final order of removal. Thus, Petitioner essentially posits that DHS must provide him a hearing before it may detain him to remove him. Petitioner essentially seeks a judicially created stay of the execution of a final removal order.

Accordingly, 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 hurdles to efficiently scheduling a hearing. There is no administrative process in place for giving an alien with a final order of removal a hearing resembling a bond hearing before an Immigration Judge. Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the current procedures. *See* 8 C.F.R. § 241.4.

Even in non-immigration contexts, courts have recognized that pre-deprivation process may be unwarranted, particularly where there is a need for prompt government action. "The necessity of quick action can arise where the government has an interest in protecting public health and safety." *Lamoreaux v. Kalispell Police Dep't*, No. 16-cv-0089, 2016 WL 6078274, at *4 (D. Mont. Oct. 17, 2016) (citing *Mackey v. Montrym*, 443 U.S. 1, 17 (1979)), *report and recommendation adopted*, 2016 WL 6634861 (D. Mont. Nov. 8, 2016). *Cf. Edmondson v. City of Boston*, No. 89-0395-Z, 1990 WL 235426, at *2 (D. Mass. Dec. 20, 1990) (noting that "[i]n the context of an arrest . . . quick action is necessary and predeprivation process is, at best, impractical and unduly burdensome").

The INA does not provide for a pre-deprivation hearing. *See, e.g.*, 8 U.S.C. § 1231. Requiring a pre-deprivation hearing for individuals with final removal orders would impair law enforcement, including because it would increase the risk of flight.

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

B. Petitioner Cannot Meet His Burden to Show Irreparable Harm.

To satisfy the standard for a temporary restraining order, a noncitizen must demonstrate "a particularized, irreparable harm beyond mere removal." *Nken v. Holder*, 556 U.S. 418, 438 (2009) (Kennedy, J., concurring) (emphasis added). A "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent a preliminary injunction. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).

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

Petitioner's contentions regarding the possibility of detention 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'"). Moreover, while Petitioner argues that being detained would cause irreparable harm, "there is no constitutional infringement if restrictions imposed" are "but an incident of some other legitimate government purpose." *Id.* (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 concedes that a legitimate purpose of detention is to ensure removal. *See* Mot. at 18. The Supreme Court has recognized that the detention of aliens is permissible and appropriate to enforce a removal order. *See Zadvydas,* 533 at 697 (recognizing that detention is appropriate to effectuate an alien's removal). Section 1231(a) "authorizes the detention of noncitizens who have been ordered removed from the United States." *Arteaga-Martinez*, 596 U.S. at 575. Indeed, "[t]he statute provides that the Government 'shall' detain noncitizens during the statutory removal period." *Id.* at 578 (citing 8 U.S.C. §

1231(a)(2)).

In this case, 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 Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish that irreparable harm is likely to occur if he is not provided a hearing.

C. The Equities and Public Interest Do Not Favor Petitioner.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). "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). Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest tip strongly in favor of the Respondents.

The public interest in enforcement of United States immigration laws is significant. *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."). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to Respondents and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

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."). 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.").

In this case, Petitioner is a convicted felon for crimes involving sexual misconduct with children with a final order of removal that he has fully litigated. *See* Ng Decl. ¶¶ 9-16. The public has an interest in ensuring that Petitioner is removed efficiently and appropriately to the extent permissible under the law. Respondents acknowledge Petitioner's submissions regarding his efforts to support his family. *See* Mot. at 4, 19. However, given Petitioner's undisputed, extensive criminal history children, the public and governmental interest in permitting his potential detention is significant. *See* Ng Decl. ¶¶ 5, 9, Ex. 5.

While it is in the public interest to protect constitutional rights, Petitioner has not shown that the violation of any constitutional rights is likely to occur. Regardless, where, as here, Petitioner has not shown a likelihood of success on the merits, the marginal value of additional process must yield to the competing interest in law enforcement. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Because Plaintiffs have not shown a likelihood of success on the merits of their First Amendment claim, because the VA has a competing public interest in providing the best possible care . . . the public interest does not require us to reverse the district court" denial of an injunction.). Thus, Petitioner has not established that the public interest supports a temporary restraining order.

///

///

///

///

///

///

///

///

VI. CONCLUSION

For the aforementioned reasons, Respondents respectfully requests that the Court deny Petitioner's motion for a temporary restraining order.

Dated: September 17, 2025

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Douglas Johns
DOUGLAS JOHNS
Assistant United States Attorney

Attorneys for Respondents