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9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF ARIZONA**

11 Monnathy L. Nambounmy,
 12
 13 **Petitioner,**
 14 v.
 15 John E. Cantu, et al.,
 16 **Respondents.**

No. 2:25-cv-03294-PHX-DJH (ASB)

**RESPONSE IN OPPOSITION TO
 MOTION FOR TEMPORARY
 RESTRAINING ORDER AND
 PRELIMINARY INJUNCTION**

17 Respondents John E. Cantu, Field Office Director, U.S. Immigration and Customs
 18 Enforcement (“ICE”), U.S. Department of Homeland Security (“DHS”); Todd Lyn, Acting
 19 Director of ICE; Kristi Noem, Secretary of DHS; and David R. Rivas, Warden, San Luis
 20 Regional Detention Center (“Respondents”), by the through undersigned counsel, respond
 21 in opposition to Petitioner’s Motion for Temporary Restraining Order and Preliminary
 22 Injunction (Doc. 8).

23 **I. Factual background.**

24 Petitioner is a citizen of Laos, born there in 1979. Ex. 1, Decl. of Ricardo A. Padilla,
 25 at ¶ 4. In 1981, Petitioner was admitted to the United States as a refugee and later adjusted
 26 his status to that of a Lawful Permanent Resident. *Id.* at ¶ 5. In 1997, Petitioner was
 27 convicted in state court of Attempted Murder in the Second Degree and sentenced to 5 years
 28 in prison. *Id.* at ¶ 6. While in state custody, he was issued a Notice to Appear and placed

1 into removal proceedings. *Id.* at ¶ 7. In August 2001, Petitioner was taken into ICE custody.
2 *Id.* On August 9, 2001, an immigration judge denied Petitioner’s application for asylum,
3 withholding of removal, and protection under the Convention Against Torture (“CAT”), and
4 ordered Petitioner removed to Laos. *Id.* at ¶ 8. Petitioner waived appeal. *Id.* Thus, Petitioner
5 is subject to a final order of removal. *Id.*; *see also* 8 U.S.C. § 110(a)(47) (removal order final
6 when period to seek review by the Board of Immigration Appeals (“BIA”) expires); 8 C.F.R.
7 § 1241.1(b) (removal order final upon waiver of appeal to BIA by alien).

8 Petitioner was released from ICE custody in November 2001 on an order of
9 supervision (“OSUP”). Ex. 1 at ¶ 9. In May 2004, Petitioner was convicted of Burglary in
10 the Second Degree and sentenced to 2 years in prison. *Id.* at ¶ 10. Upon his release from
11 prison in March 2005, Petitioner’s OSUP was revoked, and he was returned to ICE custody.
12 *Id.* at ¶ 11. Petitioner was released from ICE custody in June 2005 on an OSUP. *Id.* at ¶ 11.
13 In June 2008, Petitioner was convicted of Burglary in the Second Degree and sentenced to
14 4 years in prison. *Id.* at ¶ 12. In August 2011, Petitioner was arrested by ICE for violating
15 the terms of his OSUP and booked into ICE custody. *Id.* at ¶ 13. Petitioner was released
16 from ICE custody on an OSUP in April 2012. *Id.* In April 2014, Petitioner was convicted of
17 Burglary in the Second Degree and sentenced to 4 years in prison. *Id.* at ¶ 14. In 2016, ICE
18 placed Petitioner on an OSUP. *Id.* at ¶ 15. On July 3, 2025, Petitioner was enrolled in ICE’s
19 Alternatives to Detention (“ATD”) program. Doc. 8 at Ex. L. On July 3, 2025, Petitioner
20 submitted a request to ERO to stay his removal. *Id.* at ¶ 16; *but see* Doc. 8 at Ex. L (listing
21 date of application for stay of removal as June 13, 2025). Petitioner’s request was denied on
22 July 9, 2025. *Id.* at ¶ 17. On July 30, 2025, Petitioner was terminated from the Alternatives
23 to Detention (“ATD”) program and taken into ICE custody. *Id.* at ¶ 18. ERO has submitted
24 a travel document request packet to ERO Headquarters, Removal and International
25 Operations (“RIO”) for review. *Id.* at ¶ 19. RIO has not responded to ERO’s request for an
26 update on the status of the travel document request packet. *Id.* at ¶¶ 20, 21. That said, ERO
27 has successfully completed removals to Laos in 2025. *Id.* at ¶ 22.

28 On September 10, 2025, Petitioner filed this habeas action alleging that he is detained
in violation of the Fifth Amendment, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.13, and the

1 Administrative Procedures Act (“APA”). Petitioner also alleges that removal to a third
2 country (e.g. not Laos) would constitute punitive third country banishment in violation of
3 the Fifth and Eighth Amendments. Petitioner also filed a Motion for Temporary Restraining
4 Order asking the Court to order his immediate release from immigration detention, enjoin
5 Respondents from removing him to a third country without reopening his removal
6 proceedings, and enjoin Respondents from removing him to a third country for a punitive
7 purpose and effect. Doc. 8 at 3.

8 **II. Legal framework for preliminary injunctions.**

9 An injunction is a matter of equitable discretion and is “an extraordinary remedy that
10 may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*
11 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are “never
12 awarded as of right.” *Id.* at 24. Preliminary injunctions are intended to preserve the relative
13 positions of the parties until a trial on the merits can be held, “preventing the irreparable
14 loss of a right or judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415,
15 1422 (9th Cir. 1984). Preliminary injunctions are “not a preliminary adjudication on the
16 merits.” *Id.* A court should not grant a preliminary injunction unless the applicant shows:
17 (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer
18 an irreparable injury absent preliminary relief; (3) the balance of hardships favors the
19 applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20.
20 To show harm, a movant must allege that concrete, imminent harm is likely with
21 particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of
22 the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay*
23 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S.
24 418, 435 (2009)). Alternatively, a plaintiff can show that there are “‘serious questions going
25 to the merits’ and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the
26 second and third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*,
27 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
28 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*,

1 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s burden is aptly described as a “heavy” one.
2 *Id.*

3 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a
4 party from taking action and preserves the status quo pending a determination of the action
5 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
6 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party to
7 take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo
8 pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory injunction
9 is “subject to a higher degree of scrutiny because such relief is particularly disfavored under
10 the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994)
11 (citation omitted). The Ninth Circuit has warned courts to be “extremely cautious” when
12 issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984),
13 and requests for such relief are generally denied “unless extreme or very serious damage
14 will result,” and even then, not in “doubtful cases.” *Marlyn Nutraceuticals, Inc.*, 571 F.3d
15 at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158
16 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases,
17 district courts should deny preliminary relief unless the facts and law *clearly* favor the
18 moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

19 **III. Argument.**

20 **A. Petitioner is not likely to succeed on all of his claims.**

21 **1. Petitioner is not entitled to a pre-detention hearing.**

22 Petitioner alleges that the Government was required to provide him with a hearing
23 prior to revoking his OSUP and detaining him in ICE custody. Doc. 8 at 17. Petitioner also
24 alleges that ICE was required to comply with the regulations at 8 C.F.R. § 241.13(i). Doc.
25 8 at 22. As to Petitioner’s argument that he was required to receive notice of the reasons for
26 the revocation of release and an initial informal interview upon his return to custody
27 pursuant to 8 C.F.R. § 241.13(i), Respondents agree and concede that there is nothing in
28 Petitioner’s file documenting that he received notice of the reasons for the revocation or an
initial informal interview.

1 However, Petitioner was not entitled to a hearing prior to his OSUP being revoked.
2 Neither 8 C.F.R. §§ 241.4, 241.13 or the Due Process Clause require advanced notice of
3 ICE's intention to revoke an OSUP or a pre-revocation hearing. *See Moran v. U.S. Dep't of*
4 *Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21,
5 2020) ("Here, Petitioners have not alleged with sufficient particularity the source of any due
6 process right to advance notice of revocation of supervised release or other removal-related
7 detention.") There is no statutory or regulatory requirement that entitles Petitioner to a
8 hearing. *See generally* 8 U.S.C. § 1231(a)(6). For this Court to read one into the immigration
9 custody statute would be to create a process that the current statutory and regulatory scheme
10 does not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022).

11 **2. Petitioner's removal is possible.**

12 A federal district court is authorized to grant a writ of habeas corpus under 28 U.S.C.
13 § 2241 where a petitioner is "in custody under or by color of the authority of the United
14 States . . . in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.
15 § 2241(c)(1), (3). Ordinarily, once an alien has been deemed inadmissible and ordered
16 removed, the Government "shall remove the alien from the United States within a period of
17 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly referred to as the "removal period."
18 However, another provision, 8 U.S.C. § 1231(a)(6), permits detention of an alien after the
19 removal period for certain categories of aliens. Although the post-removal-period detention
20 statute contains no time limit on detention, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the
21 Supreme Court explained that the Fifth Amendment's Due Process Clause "limits an alien's
22 post-removal-period detention to a period reasonably necessary to bring about the alien's
23 removal from the United States. It does not permit indefinite detention." *Id.* at 689.

24 To avoid reading the statute as violating the Fifth Amendment Due Process Clause
25 and to create uniform standards for evaluating challenges to post-removal-period detention,
26 the Supreme Court held that any detention of six months or less was a "presumptively
27 reasonable period of detention," and that "an alien may be held in confinement until it has
28 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

1 period, once the alien provides good reason to believe that there is no significant likelihood
 2 of removal in the reasonably foreseeable future, the Government must respond with
 3 evidence sufficient to rebut that showing.” *Id.*

4 ERO submitted a travel document request packet to ERO Headquarters’ RIO unit on
 5 August 18, 2025. Ex. 1 at ¶ 19. The RIO has not responded to ERO’s request for a status
 6 update regarding the travel document request. Ex. 1 at ¶¶ 20, 21. The government has
 7 removed aliens to Laos in 2025, Ex. 1 at ¶ 22, so Petitioner’s removal at some point in the
 8 future is likely.

9 **3. Petitioner’s allegations regarding removal to a third country are
 10 wholly speculative.**

11 ICE has not requested travel documents for a country other than Laos. *See* Ex. 1.
 12 Thus, Petitioner’s concern that he could be removed to a third country are wholly
 13 speculative. Petitioner is incorrect that he can only be removed to a country if so ordered by
 14 an immigration judge. *See* Doc. 8 at 22 (arguing that 8 U.S.C. § 1231(b)(2)(E)(vii) requires
 15 that an immigration judge determine that Petitioner cannot be removed to Laos and that the
 16 designated third county is willing to accept Petitioner before he can be removed to a third
 17 country).

18 Petitioner argues that 8 U.S.C. § 1231(b)(2)(E)’s use of “Attorney General” means
 19 that an immigration judge must make the determination that removal to the country
 20 designated in the removal order is “impracticable, inadvisable, or impossible” and that
 21 “another country will accept the alien.” *Id.* § 1231(b)(2)(E)(vii). Petitioner is incorrect.
 22 Congress transferred the authority for removal to the Secretary of Homeland Security in the
 23 Homeland Security Act of 2002, Pub. L. No. 107-296, § 1516, 116 Stat. 2125, 2311 (Nov.
 24 25, 2002) (codified at 6 U.S.C. § 557).¹ *See Kousar v. Mueller*, 549 F. Supp. 2d 1194, 1198

25 ¹ 6 U.S.C. § 557 states:

26 With respect to any function transferred by or under this chapter (including
 27 under a reorganization plan that becomes effective under section 542 of this
 28 title) and exercised on or after the effective date of this chapter, reference in
 any other Federal law to any department, commission, or agency or any
 officer or office the functions of which are so transferred shall be deemed to

1 (N.D. Cal. 2008) (“Since March 1, 2003, the Department of Homeland Security has been
2 the agency responsible for implementing the Immigration and Nationality Act.” (citing 6
3 U.S.C. §§ 271(b)(5), 557)). Thus, it is DHS that has the authority remove aliens, not the
4 Attorney General. The Ninth Circuit recently confirmed that DHS holds that authority,
5 explaining:

6 Both the immigration court and the Department of Homeland Security
7 (“DHS”), which includes ICE, have authority to select a country of removal
8 pursuant to § 1231(b)(1) and (b)(2). The immigration court acts first. “After
9 determining that a noncitizen is removable, an IJ must assign a country of
10 removal.” *Hadera v. Gonzales*, 494 F.3d 1154, 1156 (9th Cir. 2007). The IJ
11 “shall identify a country, or countries in the alternative, to which the alien’s
12 removal may in the first instance be made, pursuant to the provisions of
13 [§ 1231(b)].” 8 C.F.R. § 1240.12(d); *see also id.* § 1240.10(f) (“The [IJ] shall
14 also identify for the record a country, or countries in the alternative, to which
15 the alien’s removal may be made pursuant to [§ 1231(b)(2)] if the country of
16 the alien’s designation” fails). The IJ’s designation is subject to judicial
17 review through the petition-for-review process. *See, e.g., Andriasian v. INS*,
18 180 F.3d 1033, 1041 (9th Cir. 1999); *Himri v. Ashcroft*, 378 F.3d 932, 938
19 (9th Cir. 2004); *Hadera*, 494 F.3d at 1156-59; *Dzyuba v. Mukasey*, 540 F.3d
20 955, 957 (9th Cir. 2008) (per curiam).

21 After immigration court proceedings have ended, “DHS retains the authority
22 to remove the alien to any other country authorized by the statute.” *Johnson*
23 [*v. Guzman Chavez*], 594 U.S. [523] at 536, 141 S. Ct. 2271 [2021]. If DHS
24 “is unable to remove the alien to the specified or alternative country or
25 countries, the order of the [IJ] does not limit the authority of [DHS] to remove
26 the alien to any other country as permitted by [§ 1231(b)].” 8 C.F.R.
27 § 1240.12(d); *see also id.* §§ 241.15, 208.16(f), 1208.16(f).

28 *Ibarra-Perez v. United States*, -- F.4th --, No. 24-631, 2025 WL 2461663, at *5 (9th Cir.
Aug. 27, 2025) (alterations in original except inclusion of full citation in *Johnson v. Guzman*
Chavez). Petitioner’s argument that only the Attorney General—via an immigration judge—
can designate a country for removal and that an alien’s immigration proceedings must
therefore be reopened prior to any third country removal is simply incorrect and premised
upon a misunderstanding of the statute.

refer to the Secretary, other official, or component of the Department to
which such function is so transferred.

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

3 Even if Petitioner’s removal to a third country was not wholly speculative, the Court
 4 should dismiss Petitioner’s claims seeking additional, extra-statutory procedures prior to
 5 removal from the United States to a third country,² because those claims are already being
 6 adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v. U.S. Dep’t of Homeland*
 7 *Sec.*, No. 25-cv-10676 (D. Mass.); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997)
 8 (noting that a district court “has broad discretion to stay proceedings as an incident to its
 9 power to control its own docket). As part of district courts’ discretion to administer their
 10 docket, courts have dismissed, without prejudice, suits brought by individuals whose claims
 11 are duplicative of class claims in other litigation. *See, e.g., Griffin v. Gomez*, 139 F.3d 905
 12 (9th Cir. 1998) (in habeas case, discussing prior stay of Fifth Amendment challenge pending
 13 completion of pending class action); *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE,
 14 2022 WL 18396018, at *4-6 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*,
 15 2023 WL 319917 (C.D. Cal. Jan. 18, 2023) (dismissing habeas case brought by federal
 16 prisoner related to COVID-19 measures reasoning that petitioner’s claims were based, in
 17 part, on a duplicative class action and were “not property before the court.”).

18 Multiple courts of appeals have upheld dismissals of cases where parallel class
 19 actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d
 20 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of
 [the] complaint which duplicate the [class action’s] allegations and prayer for relief”);

21 ² In the INA, Congress has enacted provisions governing the determination of the country
 22 to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Immigr. &*
 23 *Customs Enf’t*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United States
 24 (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the statute establishes
 25 sequences of countries where an alien shall be removed, subject to certain disqualifying
 26 conditions (e.g., the receiving country will not accept the alien). For instance, under Section
 27 1231(b)(2), possible countries of removal can include a country designated by the alien, the
 28 alien’s country of citizenship, the alien’s previous country of residence, the alien’s country
 of birth, and the country from which the alien departed for the United States. *See* 8 U.S.C.
 § 1231(b)(2). Under both Section 1231(b)(1) and (b)(2), Congress provided a fail-safe
 option in the event that other options do not work: An alien may be removed to any country
 willing and able to accept him. *See* 8 U.S.C. § 1231(b)(1)(C)(iv), (2)(E)(vii).

1 *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits
2 for injunctive and declaratory relief cannot be brought where a class action with the same
3 claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class
4 action has been certified, “[s]eparate individual suits may not be maintained for equitable
5 relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot
6 relitigate issues raised in a class action after it has been resolved, a class member should not
7 be able to prosecute a separate equitable action once his or her class has been certified”).

8 Petitioner’s claims seeking to delay or otherwise prohibit his removal to a third
9 country until ICE complies with extra-statutory procedures substantially overlap with the
10 nationwide class action, *D.V.D.* Indeed, on April 18, 2025, the court in *D.V.D.* certified,
11 pursuant to Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

12 All individuals who have a final removal order issued in proceedings under
13 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
14 proceedings) whom DHS has deported or will deport on or after February 18,
15 2025, to a country (a) not previously designated as the country or alternative
country of removal, and (b) not identified in writing in the prior proceedings
as a country to which the individual would be removed.

16 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at *11
17 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697
18 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640
19 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep’t of*
20 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025).
21 Although Petitioner discussed the *D.V.D.* case at length, he makes no mention of his class
22 membership in his Petition or Motion. Because the *D.V.D.* class was certified pursuant Rule
23 23(b)(2), *see D.V.D.*, 2025 WL 1142968, at *14, 18, and 25, membership in the class is
24 mandatory with no opportunity to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
25 361-62 (2011) (stating that Rule 23 “provides no opportunity for (b)(1) or (b)(2) class
26 members to opt out, and does not even oblige the [d]istrict [c]ourt to afford them notice of
27 the action”); *Sanderson v. Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15
28

1 (N.D. Cal. Mar. 7, 2025) (noting that “23(b)(2) class members have no opportunity to opt
2 out”).

3 The *D.V.D.* court entered a nationwide preliminary injunction requiring DHS to
4 comply with various procedures prior to removing a class member to a third country. The
5 Supreme Court stayed that preliminary injunction pending the disposition of an appeal in
6 the First Circuit and a petition for a writ of certiorari. *Dep’t of Homeland Sec. v. D.V.D.*,
7 145 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class,
8 Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants,
9 including any applicable injunctive relief. Accordingly, this Court should dismiss his claims
10 seeking additional procedures prior to his removal to a third country because they are
11 subsumed within the issues being litigated in *D.V.D.* To do otherwise would undermine
12 what Rule 23 was intended to ensure: consistency of treatment for similarly situated
13 individuals. See *Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL
14 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel
15 litigation in district courts all over the country which could ultimately threaten the
16 certification of the underlying class by creating differences among the class members.
17 Another court is already considering Petitioner’s alleged constitutional right to extra-
18 statutory procedures before removal to a third country. This Court should therefore dismiss
19 the claims seeking such relief.

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

21 The Court should deny Petitioner’s Motion as to his third country removal claims
22 because Petitioner “must demonstrate immediate threatened injury as a prerequisite to
23 preliminary injunctive relief.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674
24 (9th Cir. 1988). The “possibility” of injury is “too remote and speculative to constitute an
25 irreparable injury meriting preliminary injunctive relief.” *Id.* “Subjective apprehensions and
26 unsupported predictions . . . are not sufficient to satisfy a plaintiff’s burden of demonstrating
27 an immediate threat of irreparable harm.” *Id.* at 675-76. “[A] preliminary injunction will not
28 be issued simply to prevent the possibility of some remote future injury.” *Id.* “Speculative

1 injury does not constitute irreparable injury.” *Goldie’s Bookstore, Inc. v. Superior Ct. of*
2 *State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984).

3 Petitioner has been ordered removed to Laos—the country of his birth. Petitioner’s
4 speculation regarding the possibility of removal to a third country do not “rise to the level
5 of ‘immediate threatened injury’ that is required to obtain a preliminary injunction.”
6 *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D.
7 Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D.
8 Wash. June 16, 2008) (“Plaintiff’s argument of possible harm does not rise to the level of
9 ‘immediate threatened injury’”).

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

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

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

27 While it is in the public interest to protect constitutional rights, if, as here, the
28 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).

1 And the public interest lies in the Executive’s ability to enforce federal immigration laws.
2 *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991)
3 (“Control over immigration is a sovereign prerogative.”). Petitioner has not established that
4 he merits a preliminary injunction enjoining his removal to a third country—which this
5 Court lacks jurisdiction to enter under the jurisdiction stripping language in 8 U.S.C.
6 § 1252(g).

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

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

13 **IV. Conclusion.**

14 In light of the foregoing, Respondents request that the Court deny the Motion for
15 Temporary Restraining Order and Preliminary Injunction insofar as it seeks an order
16 requiring Respondents to provide Petitioner with a pre-revocation hearing and enjoining his
17 removal to a third country.

18 Respectfully submitted this 17th day of September, 2025.

19 TIMOTHY COURCHAIINE
20 United States Attorney
21 District of Arizona

22 s/ Katherine R. Branch
23 KATHERINE R. BRANCH
24 Assistant United States Attorney
25 *Attorneys for Respondents*
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