ERIC GRANT
United States Attorney
JOSHUA B. BANISTER
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FABIAN ALEXANDER ALVARENGA MATUTE, Petitioner, v. MINGA WOFFORD, ET AL.,[1] Respondents.	CASE NO. 1:25-CV-01206-KES-SKO OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Fabian Alexander Alvarenga Matute is mandatorily detained during his removal proceedings under 8 U.S.C. § 1225(b)(2). The following facts undercut Petitioner's motion for temporary restraining order ("TRO"): he entered the United States only in 2024, he is in removal proceedings, he has no statutory entitlement to being present in the United States, and in this context, neither does he have any constitutional entitlement. Petitioner's TRO motion also overlaps with his petition for writ of habeas corpus, and it fails to demonstrate a likelihood of success on the merits or entitlement to his requested relief.

[1] Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). Here, Petitioner's custodian is the facility administrator at the Mesa Verde Ice Processing Center in Bakersfield, California.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Honduras who entered the United States on September 4, 2024. Declaration of Deportation Officer Daniel Martinez ("Martinez Decl.") at ¶ 2. Petitioner has had multiple prior encounters with immigration officials. In 2001, Petitioner attempted to unlawfully enter the United States near Laredo, Texas, from Mexico, without being inspected, first on March 21, 2001, and then on April 2, 2001. Form I-213 (2007), Exhibit 1 to Martinez Decl., at 2-3. Both times, agents with the United States Border Patrol apprehended Petitioner and he was returned to Mexico. *Id.* at 3. Petitioner waited a week after being returned to Mexico in April 2001 and then successfully entered the United States[2] without being inspected by swimming across the Rio Grande River near Laredo, Texas. *Id.*

Petitioner next encountered immigration officials when he attempted to enter Canada to claim refugee status. Petitioner was denied entry into Canada and returned to the United States via the Detroit Ambassador Bridge where he was encountered by United States Customs and Border Protection ("CBP") officers. *Id.* at 2. CBP Officers served Petitioner with a Notice to Appear ("NTA") and placed Petitioner in removal proceedings. *Id.* at 3. On September 4, 2007, an immigration judge ordered Petitioner removed from the United States. Form I-213 (2025), Exhibit 4 to Martinez Decl., at 4. Petitioner was removed from the United States on October 15, 2007. *Id.*

Petitioner then encountered immigration officials when he applied for entry into the United States at the San Ysidro port of entry in California on Spetember 4, 2024. Martinez Decl., at 3. Petitioner did not possess any valid entry document supporting his admissibility to enter the United States. Form I-213 (2024), Exhibit 3 to Martinez Decl., at 2. CBP Officers determined Petitioner was inadmissible to the United States pursuant to Title 8 United States Code section 1182(a)(7)(i)(I). *Id.* Customs and Border Protection officers served Petitioner with a NTA notifying Petitioner that he is an arriving alien lacking proper documentation to be admitted to the United States and that he is subject to removal proceedings pursuant to Title 8 United States Code section 1229. Notice to Appear (2024),

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[2] Petitioner had multiple encounters with state and local law enforcement between 2001 and 2007 including being convicted of hindering apprehension or prosecution in violation of 2C:29-3(b)(4) of the New Jersey Revised Statutes. Martinez Decl., at 2; Rap Sheet dated September 22, 2025, Exhibit 5 to Martinez Decl.

Exhibit 2 to Martinez Decl., at 1. CBP then paroled Petitioner into the United States.

Customs and Border Protection officers turned Petitioner over to Immigration and Customs Enforcement ("ICE") Enforcement Removal Operations ("ERO") agents to be enrolled in the Alternatives to Detention ("ATD") program. Exhibit 2 to Martinez Decl., at 3. Martinez Decl., at 3. Petitioner failed to make three biometric check-in appointments on January 21, 2025, April 28, 2025, and August 11, 2025. Martinez Decl., at 3.

On September 9, 2025, Petitioner reported the ERO field office in San Francisco, California, for a scheduled immigration check in. Exhibit 4 to Martinez Decl., at 3. ERO . *Id.* Upon review of his case, ERO determined that Petitioner was a frequent ATD violator and conducted a custody determination interview. *Id.* ERO conducted a custody redetermination and informed Petitioner that he was being taken into custody for being an ATD violator. *Id.* Pursuant to a custody redetermination, Petitioner was taken into custody and placed in mandatory detention pursuant to Title 8 United States Code section 1225(b). *Id.*

On September 15, 2025, Petitioner filed a Petition for Writ of Habeas Corpus alleging substantive and procedural due process violations under the Fifth Amendment. ECF No. 2 ¶¶ 18-50. The habeas petition seeks Petitioner's immediate release from custody, an order prohibiting him transfer outside of this District, an order prohibiting his deportation, an order prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral adjudicator, and an order enjoining the government not to transfer him outside of the District or deport him for the duration of the proceeding. ECF No. 1 at ¶¶ 51-55, 56-60. On September 17, 2025, Petitioner also filed this TRO reiterating his claims and seeking the same relief on an emergent basis. ECF No. 7.

III. LEGAL STANDARDS

A. Standard for Temporary Restraining Orders.

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a

"difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

"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) (internal quotation omitted). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

B. Applicants for Admission.

The Immigration and Nationality Act ("INA") defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)." 8 U.S.C. § 1225(a)(1); Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing INA § 235(a)(1)); Matter of Lemus, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission"). Under Section 212(a) of the INA, 8 U.S.C. § 1182(a), certain classes of noncitizens are inadmissible, and therefore ineligible to be admitted to the United States, including those "present in the United States without being admitted or paroled[.]" 8 U.S.C. § 1182(a)(6)(A)(i). However long he has been in this country, a noncitizen who is present in the United States but has not been admitted "is treated as 'an applicant for admission.'" Jennings v. Rodriguez, 583 U.S. 281, 287 (2018).

C. Detention Under 8 U.S.C. § 1225.

Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission, may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. §

1225(b)(1) or removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a. These noncitizens "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.")

Section 1225(b)(2) is "broader" that (b)(1) and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining that proceedings under section 1229a are "full removal proceedings under section 240 of the INA"); *see also id.* ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299).

1. Parole under Section 1182(a)(d)(5)(A)

The Secretary of DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). When in the opinion of Secretary of DHS, the purposes of such parole has been served, "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.* "The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) [8 U.S.C. § 1182(d)(5)(A)] of the Act." 8 C.F.R. §212.5(a).

"The parole of aliens within the following groups who have been or are detained in accordance with § 235.3(b) or (c) of this chapter would generally be justified only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a

security risk nor a risk of absconding." *Id.* § 212.5(b). "Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act [8 U.S.C. §1229] shall be detained in accordance with section 235(b) [8 U.S.C. § 1225] of the Act. Parole of such alien shall only be considered in accordance with § 212.5(b) of this chapter. *Id.* § 235.3(c)(1). Subsections 235.3(b) and (c) refer to certain "arriving aliens" and certain other aliens "determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (7). *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007).

In cases where parole is granted, DHS officials may require "reasonable assurances" that among other things, the alien will appear at all hearings. 8 C.F.R. § 212.5(d). Such conditions may include periodic reporting requirements. *Id.* § 212.5(d)(3). When in the opinion of an official designated in paragraph (a) of section 212.5, "neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole." *Id.* §212.5(e)(2)(i). Further, "[w]hen a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified." *Id.* Any further hearings shall then be conducted pursuant to Title 8 sections 1225 or 1229. *Id.*

IV. ARGUMENT

A. Petitioner's TRO Should be Denied Because It Improperly Seeks the Same Relief as His Habeas Petition

Petitioner's TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits but instead seeks the ultimate relief he demands in this case. *Compare* ECF Nos. 1 and 4. 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, Petitioner's 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. ECF No. 1 at 5-6, 28-29., Prayer; ECF No. 4 at 23. By seeking the same relief in both motions, Petitioner was particularly burdening this court and trying to get two bites of the apple: namely a decision from the District Judge on the TRO and findings and recommendations from the Magistrate Judge on the habeas petition through the screening process. EDCA LR 302(c).

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 974, 978 (9th Cir. 1992). This Court has likewise disallowed this approach. *See, e.g., Keo v. Warden of Mesa Verde Ice Processing Center*, No. 1:24-cv-00919-HBK, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024) (denying the TRO of an in-custody detainee who sought the same relief as in the habeas petition finding "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits."). Other districts agree. *See, e.g., Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024) (same). Petitioner's TRO should be denied for the same reasons.

B. Petitioner is Not Likely to Succeed on the Merits Because His Mandatory Detention is Constitutional and His Due Process Rights Were Not Violated

The Supreme Court has upheld the constitutionality of mandatory detention for certain noncitizens while their removal proceedings are pending. Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(2), and that detention is both mandatory and constitutionally sound. "Under [8 U.S.C. § 1225], an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). Regardless of whether an alien is detained pursuant to subsections (b)(1) or (2), Title 8 United States Code section 1182(d)(5)(A) permits the government to temporarily release the alien on parole. *Id.* at 288. However, the existence of removal proceedings pursuant to section 1229 of Title 8 does not mean an alien detained pursuant to section 1225(b)(1) or (2) requires release. Detention is mandatory "throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Id.* at 302.

Petitioner cannot show a likelihood of success on his claim that he is entitled to an additional

custody hearing prior to re-detention. In 2024, Petitioner was an arriving alien who appeared to the inspecting officer to be inadmissible and placed into removal proceedings pursuant to section 1229. Section 1225(b)(2)(A) expressly contemplates that a noncitizen detained pursuant to this provision would be placed in removal proceeding pursuant to section 1229. Petitioner is therefore incorrect to assert the government is attempting to transfer Petitioners proceedings from those governed by section 1229. ECF No. 2 at 2.

Petitioner was granted parole pursuant to DHS's authority under Title 8 United States Code section 1182(d)(5)(A) and administered pursuant to Title 8 Code of Federal Regulations sections 212.5 and 235.3. That parole immediately terminated when Petitioner was served with his Notice to Appear on September 4, 2024. *See Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025) (stating that humanitarian parole under Section 1182(d)(5) "automatically terminate[s] when [an alien is] served with a notice to appear") (citing 8 C.F.R. § 212.5(e)(2)(i). DHS, in its discretion, placed Petitioner in the ATD program with certain reporting requirement conditions. Petitioner failed to adhere to those requirements and DHS, in its discretion, removed Petitioner from the ATD program and placed him in mandatory detention pursuant to section 1225(b)(2). Petitioner's status, without a grant of parole, automatically reverted back to that when he received the parole in 2024, namely that he is an arriving alien who is inadmissible and subject to removal proceedings making his detention required by section 1225(b)(2). Petitioner is not entitled to a custody redetermination hearing by an immigration judge or a pre-deprivation hearing before re-detention. *Jennings*, 583 U.S. at 297 ("neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). Nor is his release authorized by statute. *Id.* ("[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded."); *see also Matter of Q. Li,* 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). Because detention is required, Petitioner cannot succeed on the merits of his TRO and the Court should therefore deny it. *Lopez Contreras v. Oddo*, No. 3:25-CV-162, 2025 WL 2104428, at *5 (W.D. Pa. July 28, 2025) (denying TRO and habeas

corpus petition for mandatorily detained alien).

Petitioner's due process rights were not violated. The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals. . ." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst,* 408 U.S. at 767.

Thus, applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). In 2020, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" explaining that an individual who illegally crosses the border is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). Accordingly, Petitioner's due process rights are limited to whatever statutory rights Congress provides. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (same). None of Petitioner's constitutional or due process rights were violated and his TRO should be denied.

C. Petitioner is Not Likely to Suffer Irreparable Harm

While the Ninth Circuit has recognized that "[a]n alleged constitutional infringement will often alone constitute irreparable harm," *Goldie's Bookstore, Inc. v. Superior Court* , 739 F.2d 466, 472 (9th Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate "a sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a preliminary injunction." *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir.1991)). Here, as demonstrated above and as in *Goldie's Bookstore*, Petitioner's

purported constitutional claim is "too tenuous" to support an injunction. *Goldie's Bookstore*, 739 F.2d at 472.

D. The Balance of Equities and the Public Interest

The balance of the equities and public interest do not automatically tip toward Petitioner simply because he has alleged a due process violation. Even where constitutional rights are implicated, where a petitioner has not shown a likelihood of success on the merits of a claim, a court should not grant a preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The Executive also has an important interest in exercising its enforcement authority. "The government has a strong interest in enforcing immigration laws." *Abdul-Samed v. Warden*, 2025 WL 2099343, at *8 (E.D. Cal. July 25, 2025) (concluding, however, that the government interest in detention "without a bond hearing" was outweighed by petitioner's liberty interest). Here, given Petitioner's mandatory detention, Petitioner cannot establish a likelihood of success on the merits, and the Court should deny his habeas petition and request his TRO. Accordingly, the public interest is best served by denying Petitioner's TRO.

E. Petitioner Seeks Unlawful Relief

Petitioner's request for relief goes beyond what is permissible by statute. This Court cannot issue an order prohibiting Petitioner's re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. *Phan v. Moises Becerra*, 2:25-cv-01757-DC-JDP (June 30, 2025). Petitioner is also not entitled "to immediate release from custody" as requested. ECF 2, at 11, Prayer for Relief. Petitioner is also not entitled to "an order prohibiting ICE from re-detaining petitioner" or "transferring Petitioner outside of this District". ECF 1, at 11-12. The Court has no jurisdiction to bar execution of a future removal order. 8 U.S.C. § 1252(g). The INA 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)); *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.

Finally, if any relief is granted, pursuant to Rule 65(c), "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). If the Court grants a TRO or preliminary injunctive relief, the United States respectfully requests that the Court require Petitioner to post security during the pendency of the Court's order in an amount that the Court considers appropriate under Rule 65(c).

F. Should the Court Order a Bond Hearing, the Burden is on Petitioner

Should the Court order a bond hearing, Petitioner is mistaken that the burden should be on the government to justify his detention by clear and convincing evidence. The Constitution does not require the government to bear the burden of establishing that the noncitizen will be a flight risk or danger—much less that the government be subject to a clear-and-convincing-evidence standard—to justify temporary detention pending removal proceedings. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings, notwithstanding that the government has never borne the burden to justify that detention by clear and convincing evidence. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538; *Zadvydas*, 533 U.S. at 701. In fact, the Supreme Court has repeatedly upheld detention pending removal proceedings on the basis of a categorical, rather than individualized, assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And in *Zadvydas*, the Court placed the burden on the noncitizen, not the government, to show that his detention was unjustified. *Zadvydas*, 533 U.S. at 701 (noncitizen must first "provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," only after which "the Government must respond with evidence sufficient to rebut that showing").

Indeed, the Ninth Circuit questioned (in the § 1226(a) context) how the burden-shifting and standard of proof that Petitioner demands could be constitutionally required:

> Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases. There is no reason to believe that, as a general proposition, the government will invariably have more evidence than the alien on most issues bearing on alleged lack of future dangerousness or

flight risk.

Rodriguez Diaz, 53 F.4th at 1211 (9th Cir. 2022). Accordingly, if the Court grants Petitioner a bond hearing, the burden at any such bond hearing is properly placed on him.

V. CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court deny the TRO.

Dated: September 25, 2025

ERIC GRANT
United States Attorney

By: /s/ JOSHUA B. BANISTER
JOSHUA B. BANISTER
Assistant United States Attorney