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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Mehrdad Rowshandel,

Petitioner,

v.

John Cantu, et al.,

Respondents.

No. 2:25-cv-03470-DWL--ESW

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

Respondents John Cantu, U.S. Immigration and Customs Enforcement ("ICE") Phoenix Field Office Director; Todd M. Lyons, Acting Director of ICE; Kristi Noem, Secretary of the U.S. Department of Homeland Security ("DHS"); Pamela Bondi, Attorney General of the United States; and Fred Figueroa, Warden, Eloy Detention Center ("Respondents"), by and through undersigned counsel, hereby respond in opposition to Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2).

I. FACTUAL BACKGROUND.

Petitioner is a native and citizen of Iran. Exhibit A, Declaration of Edmundo Galvan, Jr., ¶ 4. Petitioner entered the United States in 1998 on a visa, and later sought to adjust his status through USCIS. *Id.* ¶ 5. In 2000, Petitioner was granted status. *Id.* ¶ 6. In 2002, Petitioner was convicted of attempted sexual assault. *Id.* ¶ 7. He was issued a Notice to Appear charging him with being removable under section 237(a)(2)(A)(iii) of the

Immigration and Nationality Act ("INA") for the aggravated felony conviction for attempted rape, and under INA section 237(A)(2)(A)(i) for a crime involving moral turpitude. *Id.* ¶ 8. In 2003, the Immigration Judge denied Petitioner's request for withholding of removal under INA section 241(b)(3) but granted deferral of removal to Iran under the Convention Against Torture ("CAT"). *Id.* ¶ 9.

In April 2010, Petitioner attempted to enter the United States at the San Ysidro, California Port of Entry.[1] *Id.* ¶ 10. He was detained by ICE on the basis of his 2003 removal order. *Id.* On June 24, 2025, Petitioner was arrested by ICE, charged with violating section 212(a)(6)(A)(i) of the INA,[2] and detained. *Id.* ¶ 11. On July 16, 2025, Petitioner requested parole. *Id.* ¶ 14. Petitioner's parole request was denied on the ground that he posed a danger to the community. *Id.* ¶ 15. On September 17, 2025, Petitioner requested parole. *Id.* ¶ 17. On September 18, 2025, the Deputy Field Office Director informed Petitioner that his detention would be continued due to a significant flight risk and danger to the community. *Id.* ¶ 18; Ex. B, DFOD Ciliberti's decision.

Petitioner filed this habeas action on September 22, 2025, asserting two causes of action: (1) that his detention violates procedural due process and (2) that his detention violates substantive due process. Doc. 1 at 15-16.[3] Petitioner also filed a Motion for Temporary Restraining Order and Preliminary Injunction seeking a Court order requiring Respondents to release Petitioner from custody and enjoining Respondents from "sending him to any place outside of the United States." Doc. 2 at 16. The Motion for Temporary Restraining Order and Preliminary Injunction does not address Petitioner's potential removal from the United States other than summarily asking the Court to enjoin his removal. Doc. 2

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[1] Petitioner had not been removed from the United States, so he presumably left the United States voluntarily at some point between 2003 and April 2010.

[2] 8 U.S.C. § 1182(a)(6)(A)(i) (Aliens present without admission or parole).

[3] In the factual background, Petitioner alleged that in 2016, an IJ failed to make finding of changed circumstances to justify Petitioner's re-detention, and that in June 2025, DHS moved to re-calendar administratively closed proceedings. *See* Doc. 1 at ¶¶ 32, 33. This appears to be a copy-paste error by Petitioner's counsel as neither of these events occurred with respect to this Petitioner.

at 1, 16. The Petition for Writ of Habeas Corpus does not seek any relief related to Petitioner's removal.

II. LEGAL FRAMEWORK FOR 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). Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* "'[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.'" *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, pp. 129-130 (2d ed. 1995) (emphasis in original). To obtain a preliminary injunction, the moving party must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. 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*, 555 U.S. at 22. Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Where the government is a party, courts merge the analysis of the final two *Winter* factors: the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third

1 *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856
2 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.
3 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they
4 are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469
5 (9th Cir. 2010). Petitioner's burden is a "heavy" one. *Id.*

6 A preliminary injunction can take two forms. A "prohibitory injunction prohibits a
7 party from taking action and preserves the status quo pending a determination of the action
8 on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
9 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to
10 take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo
11 pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction
12 is "subject to a higher degree of scrutiny because such relief is particularly disfavored under
13 the law of this circuit." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994)
14 (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when
15 issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984),
16 and requests for such relief are generally denied "unless extreme or very serious damage
17 will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d
18 at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158
19 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases,
20 district courts should deny preliminary relief unless the facts and law *clearly* favor the
moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

21 **III. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.**

22 **A. Petitioner is not likely to succeed on the merits, nor has he raised serious**
23 **questions going to the merits of his claims.**

24 **1. Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6).**

25 Petitioner relies on the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678
26 (2001), to allege a violation of his constitutional rights. Ordinarily, once an alien has been
27 deemed inadmissible and ordered removed, the Government "shall remove the alien from
28 the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly

referred to as the "removal period." However, another provision, 8 U.S.C. § 1231(a)(6), permits detention of an alien after the removal period for certain categories of aliens. Although the post-removal-period detention statute contains no time limit on detention, in *Zadvydas*, the Supreme Court explained that the Fifth Amendment's Due Process Clause "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States. It does not permit indefinite detention." 533 U.S. at 689.

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

The purpose of § 1231(a)(6) detention is to effectuate removal. *See Demore 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"). The statute provides that—if the alien is not removed—the alien "shall be subject to supervision" under relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). Here, Petitioner has a final order of removal. He was previously released from immigration detention but has been re-detained in order to obtain a travel document to effectuate his removal and is subject to continued detention under 8 C.F.R. § 241.4 (e) and (f) as a flight risk and a threat to public safety. *See* Ex. B.

2. The Government is not required to show "changed circumstances" or provide advance notice prior to revoking an OSUP.

In the Motion for a Temporary Restraining Order and Preliminary Injunction, Petitioner asserts that "ICE did not demonstrate any change in circumstances that would

justify revoking his long-standing release, nor did it provide him with an opportunity to be heard before depriving him of his liberty." Doc. 2 at 3. In support of that assertion, Petitioner relies on *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), but Petitioner's reliance on *Matter of Sugay* is misplaced because his detention is governed by 8 U.S.C. § 1231(a)(6).

Matter of Sugay stated that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director [of ICE] absent a change in circumstances." 17 I. & N. Dec. at 640. In Petitioner's case, no bond determination was ever made by an immigration judge, so *Matter of Sugay* is inapplicable. Petitioner string cites a number of cases all but one of which concern aliens subject to *pre-final removal order* detention in which the primary consideration is ensuring the alien's presence at their future removal proceedings and in which bond hearings are largely available by regulation. *See* Doc. 2 at 7 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019) (petitioner was awaiting Ninth Circuit review of removal order so detention was governed by 8 U.S.C. § 1226(a)); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *1 (N.D. Cal. Aug. 23, 2020) (involving alien who had not been ordered removed and considering whether he was subject to detention under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1226(c)); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1053 (N.D. Cal. 2021) (same as *Ortega*); *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250, at *1 (N.D. Cal. May 6, 2022) (habeas case involving detention under 8 U.S.C. § 1226(c)); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *1 (E.D. Cal. Mar. 3, 2025) (petitioner was in removal proceedings pending adjudication of asylum claim so detention was governed by 8 U.S.C. § 1225(b)(1)(B)(ii)); *but see Enamorado v. Kaiser*, 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (granting TRO without notice to the government in habeas action brought by alien with final order of removal who sought to prospectively enjoin the potential revocation of his immigration bond and potential re-detention)). Here, Petitioner is subject to post final order detention under 8 U.S.C. § 1231(a)(6). The purpose of that detention is to effectuate removal—not to ensure presence at removal proceedings. Accordingly, the reasoning underlying the cases Petitioner cites is distinguishable.

Presumably, Petitioner was released on an order of supervised release ("OSUP") after his detention in 2010, although undersigned counsel has not been able to confirm that with ICE. Assuming that is the case, if ICE releases an alien on an OSUP under 8 C.F.R. § 241.13, ICE "may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). ICE is not required to provide the alien with advance notice of its intention to revoke the order of supervision. Rather, "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release[,]" and ICE will promptly conduct an initial informal interview to afford the alien an opportunity to respond to the reasons for revocation and may submit evidence that he or she believes shows there is no SLRRFF. 8 C.F.R. § 241.13(i)(3).[4] If ICE denies a re-detained alien's request for release, he or she may request a review of his or her detention at six-month intervals. 8 C.F.R. § 241.13(j). Nothing in the regulations requires pre-revocation notice or a pre-detention hearing. *See Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) ("Here, Petitioners have not alleged with sufficient particularity the source of any due process right to advance notice of revocation of supervised release or other removal-related detention."). Because Petitioner is subject to detention as a flight risk and danger while travel documents are obtained, he has failed to establish a likelihood of success on his claim that his re-detention violates his procedural or substantive due process rights.

3. Petitioner is not entitled to a pre-detention hearing.

The Due Process Clause did not prohibit ICE from re-detaining Petitioner. There is no statutory or regulatory requirement that entitles Petitioner to a "pre-deprivation" hearing, much less one involving burden-shifting against the government. *See generally* 8 U.S.C. § 1231(a)(6). For this Court to read one into the immigration custody statute would be to create a process that the current statutory and regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022).

[4] Counsel has not been able to confirm with Respondents whether Petitioner was notified of the reasons for revocation or received an initial informal interview.

Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472-73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 481. In addition, the "[c]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function." *Id.* With respect to the precise nature of the government function, the Supreme Court has long held that "Congress regularly makes rules" regarding immigration that "would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty interest in a pre-detention hearing, but even assuming he had one, it would be reduced based on the immigration context.

The procedural process provided to Petitioner is constitutionally adequate under the circumstances and no additional process is required. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment] Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. The first factor favors Respondents. The Supreme Court has long recognized that due process as applied to aliens in matters related to immigration does not require the same strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when

1 exercising its "broad power over naturalization and immigration, Congress regularly makes
2 rules regarding aliens that would be unacceptable if applied to citizens." *Diaz*, 426 U.S. at
3 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are
4 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.
5 at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the
6 individuals subject to immigration detention possess at least a limited liberty interest, it has
7 also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634
8 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner's liberty interest is less than that at
9 issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-
10 detention hearing.

11 The second *Mathews* factor also favors Respondents. Under the existing procedures,
12 aliens including Petitioner face little risk of erroneous deprivation. As explained above,
13 there is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably
14 authorizes Petitioner's detention to execute his final removal order to a third country, and
15 ICE is required to give Petitioner additional procedures under the Post Order Custody
16 Review Regulations in 8 C.F.R. § 241.13. These procedures are more than adequate to
17 provide Petitioner notice and opportunity to be heard during his detention.

18 The third *Mathews* factor—the value of additional safeguards relative to the fiscal
19 and administrative burdens that they would impose—weighs heavily in favor of
20 Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation
21 hearing—adds little value to the system already in place in which he will receive periodic
22 custody reviews to ensure his removal remains reasonably foreseeable and determine
23 whether he remains a flight risk and/or danger to the community. Petitioner's proposed
24 safeguard would disrupt the detention and removal process. Because the hearing Petitioner
25 proposes would, by definition, involve a non-detained individual, there are hurdles to
26 efficiently scheduling a hearing. There is no administrative process in place for giving an
27 alien with a final order of removal a hearing resembling a bond hearing before an
28 immigration judge before the alien is detained for removal. Petitioner's proposed safeguard
presents an unworkable solution to a situation already addressed by the current procedures.

See 8 C.F.R. §§ 241.4 and 241.13. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-detention hearing.

4. The Court lacks jurisdiction to enjoin Petitioner's removal.

Although not addressed in the body of Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction, Petitioner does open and conclude the Motion by asking the Court to enjoin his removal from the United States seemingly indefinitely. Petitioner's request 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).

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 petitioner's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner's argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Hamama v. Adducci*,

1 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal,
2 concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims
3 and remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d
4 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the
5 execution of a final order of removal, and language barring "any cause or claim" made it
6 "unnecessary for Congress to enumerate every possible cause or claim"). Thus, the Court
7 lacks jurisdiction to enjoin Respondents from removing Petitioner.

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

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

16 Petitioner argues that any continued detention will be detrimental because the
17 conditions in immigration facilities are known to be "subpar." Doc. 2 at 14. But "there is no
18 constitutional infringement if restrictions imposed" are "but an incident of some other
19 legitimate government purpose." *Slaughter v. King County Corr. Facility*, No. 05-cv-1693,
20 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation*
21 *adopted*, 2008 WL 2434208 (W.D. Wash. June 16, 2008) (citing, *e.g.*, *Bell v. Wolfish*, 441
22 U.S. 520, 535 (1979)). "In such a circumstance, governmental restrictions are permissible."
23 *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 747, (1987)).

24 Petitioner cannot show that denying the temporary restraining order would make
25 "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must]
26 demonstrate that irreparable injury is *likely* in the absence of an injunction.") (emphasis in
27 original). "[A] preliminary injunction will not be issued simply to prevent the possibility of
28 some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury."
Goldie's Bookstore, Inc. v. Superior Court of State of Cal., 739 F.2d 466, 472 (9th Cir.

1984). Petitioner cannot establish irreparable harm if he is not released from detention and provided a pre-detention hearing where he is lawfully detained pursuant to a final executable removal order.

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

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

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

While it is in the public interest to protect constitutional rights, if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's undisputed criminal history, which includes an aggravated felony for attempted rape, and DFOD Ciliberti's determining that Petitioner is a danger and a flight risk, the public and governmental interest in permitting his detention is significant. Thus, Petitioner has not established that he merits injunctive relief.

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

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

VI. Conclusion.

Every habeas corpus petition necessarily alleges the same basic ground for relief, *i.e.*, that the petitioner is detained in violation of the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that exceptional circumstances require immediate review of a petitioner's claims will consideration of his petition be advanced at the expense of prior, pending petitions. Upon the current record, it is not plain that the merits of Petitioner's claims are so strong as to warrant expedited adjudication and Petitioner is not likely to succeed on the merits of his claim. *See In re Roe*, 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of whether a district court has the authority to release a prisoner pending resolution of a habeas case, but holding that if such authority does exist, it can only be exercised in an "extraordinary case involving special circumstances"). Accordingly, Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction should be denied. However, if the Court is inclined to grant the Motion, Respondents request that the Court set a deadline of 24 hours within which Respondents must release Petitioner, rather than "immediately."

Respectfully submitted this 9th day of October, 2025.

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s/ Katherine R. Branch
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