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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MYKE JONATHAN CUX JOCOP, a.k.a. Mike Cux Jacop, Petitioner-Plaintiff, v. SERGIO ALBARRAN, Field Office Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement, et al., Respondents-Defendants..	No. 3:25-cv-09059-JD **RESPONDENTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

INTRODUCTION

Petitioner's motion for a preliminary injunction should be denied. Petitioner is subject to a final order of removal from the United States because he has unlawfully entered the United States at least three times. Petitioner has requested withholding from removal, which does not challenge the order of removal, but rather requests that he not be removed to Guatemala. Petitioner, thus, remains subject to detention under 8 U.S.C. § 1231(a)(6) and as such Respondents are not required to grant him a bond hearing. Petitioner was previously *temporarily* ordered released by Judge Chhabria in *Zepeda Rivas v. Jennings*, No. 20-cv-02731-VC, a class action filed in response to the COVID pandemic and resulting conditions of confinement. *See Zepeda Rivas*, Dkt. No. 375. The protections from re-detention established for class members in *Zepeda Rivas*, which were always temporary, have now expired. Petitioner once again remains subject to detention. As such, he cannot demonstrate that he is likely to succeed on his habeas claims.

BACKGROUND

A. Petitioner's Immigration History pre-*Zepeda Rivas.*

Petitioner Myke Jonathan Cux Jocop is a native and citizen of Guatemala and a member of the Kachiquel ethnic group. Dkt. No. 3 (Motion for TRO) at 2; Declaration of Jarvin Li ("Li Decl.") at ¶ 6. Petitioner first entered the United States illegally in September 2008. Li Decl. at ¶ 7. He was detained and removed to Guatemala under an order of expedited removal. *Id.* at ¶ 8. In August 2013, Petitioner received a felony conviction under California Penal Code § 261.5(c). *Id.* at ¶ 9. The following month, DHS reinstated Petitioner's previous order of removal and on September 24, 2013, Petitioner was removed to Guatemala. *Id.* at ¶¶ 10-11. On March 10, 2017, a warrant was issued charging Petitioner with another violation of California Penal Code § 261.5(c) (sexual intercourse with a minor) and a violation of California Penal Code § 4573 (bringing a controlled substance into prison), a felony. *Id.* at ¶ 12. On March 27, 2020, DHS encountered and detained Petitioner and reinstated his previous order of removal. *Id.* at ¶ 13. Petitioner [redacted] Guatemala. *Id.*

B. *Zepeda Rivas* COVID Class Action.

As a result of Petitioner's detention in March 2020, he became a class member in *Zepeda Rivas*

v. Jennings, No. 20-cv-02731-VC. *Zepeda Rivas* was filed in response to the COVID pandemic. It challenged the conditions of confinement at Mesa Verde and Yuba County jail resulting from the challenges of the pandemic, including the inability of detainees to socially distance and the lack of COVID testing. On April 29, 2020, Judge Chhabria provisionally certified a *Zepeda Rivas* class and instituted a process for considering release requests from detainees. Under the standard conditions of release, which were incorporated into every order granting release, Judge Chhabria specifically ordered that: "[t]he Class Member's temporary release will expire upon the final adjudication of the habeas petition in this case[.]" *See Zepeda Rivas,* Dkt. Nos. 108 (Standard Conditions of Release), 369 (Revised Standard Conditions of Release). Petitioner was temporarily released pursuant to the *Zepeda Rivas* process on June 15, 2020. *See Zepeda Rivas*, Dkt. No. 375.

The parties in *Zepeda Rivas* subsequently entered into a settlement. *See Zepeda Rivas*, Dkt Nos. 1205-1, 1229. The settlement agreement was heavily negotiated and extremely detailed. Under the terms of the settlement agreement, ICE generally agreed to forgo re-detaining released class members for three years following approval of the settlement "unless they pose[d] a threat to public safety or national security, and/or risk of flight." *See Zepeda* Rivas, Dkt. No. 1205-1, at 13 (Subsection III.A). But these protections ended after three years, and the agreement specifically authorizes ICE to re-detain class members as before following the expiration of its three-year term:

> At the conclusion of the three-year period set forth in Subsection III.A, ICE's rearrest and re-detention practices for Class Members will occur pursuant to generally applicable law and policy.

Id. at 16 (Subsection III.G). While the agreement specified certain conditions for re-detention *during* the three-year period, *see id.* at 13–16, 18–19, it did not provide for any conditions, much less a pre-detention hearing requirement, for re-detention following the expiration of that term.

Judge Chhabria approved the settlement on June 9, 2022. *See Zepeda Rivas*, Dkt. No. 1258. As such, class members, such as Petitioner, lost protection from re-detention on June 9, 2025, when the *Zepeda Rivas* settlement expired. *See* https://www.aclunc.org/our-work/legal-docket/zepeda-rivas-v-jennings-immigration-detention (notice that the *Zepeda Rivas* settlement expired on June 9, 2025).

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C. Post-*Zepeda Rivas* Proceedings.

On June 15, 2020, Petitioner was granted bail subject to certain conditions. *See Zepeda Rivas*, Dkt. No. 375. Petitioner was released from custody on June 16, 2020, and placed in the ICE monitoring program through the Intensive Supervision Appearance Program and Alternatives to Detention ("ATD"). Dkt. No. 3 at 4. In February 2021, an asylum officer found Petitioner had a reasonable fear of persecution and he was referred to Immigration Court for withholding-only proceedings. *Id.* at 3.[1]

Over the past year, petitioner had multiple ATD violations. Specifically, Petitioner missed biometric check-ins on May 14, 2025, July 2, 2025, August 6, 2025, and October 15, 2025. Li Decl. at ¶¶ 16-19. On October 21, 2025, Petitioner was detained by ICE pursuant to 8 C.F.R. 241.4(l)(1) due to his repeated ATD violations. *Id.* at ¶ 20. Following his detention, DHS served Petitioner with a Notic of Revocation of Release and provided him an informal interview regarding the basis for the revocation of the order of supervision. *Id.* On October 23, 2025, pursuant to this Court's Order, DHS released Petitioner from detention. *Id.* at ¶ 23.

LEGAL STANDARDS

A. Mandatory Detention Under 8. U.S.C. § 1231.

The detention of an alien following reinstatement of a prior order of removal is governed by 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021). Section 1231(a)(2) provides that the government "shall detain" the alien for a 90-day "removal period," the commencement of which can be triggered by various events in the alien's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B).

"If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." *Id.* § 1231(a)(3). The governing regulations provide that DHS may release an alien under certain conditions

[1] Petitioner argues in his motion that on June 4, 2025, an Immigration Judge found that he is eligible to apply for asylum, notwithstanding the reinstatement of his removal order. Dkt. No. 3 at 3. Respondents contend that such a finding is improper and that the Immigration Court cannot adjudicate his application for asylum as Petitioner has a final removal order in place and is thus statutorily ineligible for asylum. *See Matter of L-M-P*, 27 I&N Dec. 265 (BIA 2018) ("An applicant in withholding of removal only proceedings who is subject to a reinstated order of removal pursuant to section 241(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(5) (2012), is ineligible for asylum.").

and may revoke the alien's release when those conditions are violated. *See generally* 8 C.F.R. § 241.4.

Moreover, an alien "may be detained beyond the [90-day] removal period" if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6). And "if released," such an alien "shall be subject to the terms of supervision in paragraph (3)." *Id.*

Section 1231(a) does not provide for a bond hearing for the noncitizen to challenge their detention. *See Guzman Chavez*, 594 U.S. at 526. Rather, noncitizens subject to final orders of removal can request review of their detention after the expiration of the 90-day removal period "where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). The Supreme Court has recognized that detention of up to six months to effectuate the removal of a noncitizen is "presumptively reasonable" and constitutionally valid, though longer detention may require additional justification. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Moreover, Section 1231(a)(6) does not require the Government to provide noncitizens detained for six months with bond hearings in which the Government bears the burden of proving, by clear and convincing evidence, that a noncitizen poses a flight risk or a danger to the community. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-81 (2022).

B. Preliminary Injunctions.

"A preliminary injunction is an extraordinary and drastic remedy." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (internal quotation marks and citation omitted). "The Supreme Court has emphasized that preliminary injunctions are an 'extraordinary remedy never awarded as of right.'" *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citation omitted). To prove entitlement to a preliminary injunction, a petitioner must establish that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit recognizes a sliding scale test, under which a preliminary

injunction may issue if the petitioner demonstrates "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff . . . assuming the other two elements of the *Winter* test are also met." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). The petitioner must adduce "substantial proof" and make a "'*clear showing*'" that preliminary equitable relief is warranted. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original).

Under Federal Rule of Civil Procedure 65(a)(2), the Court may consolidate consideration of a motion for a preliminary injunction with the consideration of the merits of an action. "Consolidation is generally appropriate when it would (1) result in an expedited resolution of the case; (2) conserve judicial resources and avoid duplicative proceedings; (3) involves only legal issues based on uncontested evidence and public records; and (4) would not be prejudicial to any of the parties." *Thomas v. Zachry*, No. 3:17-cv-0219-LRH, 2017 WL 2174946, at *1 (D. Nev. May 17, 2017) (citing cases).

C. 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). In immigration cases, the federal courts' habeas jurisdiction is limited by 8 U.S.C. § 1252(a)(2)(B), which provides that "no court shall have jurisdiction to review" "decision[s]" for which the statute grants "discretion" to the Attorney General. *See also id.* § 1252(g); *Rauda v. Jennings*, 55 F.4th 773, 776-77 (9th Cir. 2022) (holding district courts lack jurisdiction to enjoin the execution of removal orders).

ARGUMENT

I. Petitioner Is Unlikely To Succeed On The Merits Of His Due Process Challenge.

Petitioner's repeated violations of ATD violated the conditions of his release and order of supervision. ICE, therefore, properly redetained Petitioner under the governing statutes and regulations. The Supreme Court has squarely held that aliens pursuing withholding-only relief are not entitled to a bond hearing. *See Guzman Chavez*, 594 U.S. at 531; *Arteaga-Martinez*, 596 U.S. at 580-81. The Constitution does not require any extra process in Petitioner's case. Petitioner's claims therefore fail on the merits.

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A. Petitioner's Detention Does Not Violate 8 U.S.C. § 1231.

Petitioner's motion does not address the fact that his detention is permissible under 8 U.S.C. § 1231, as his order of removal has been reinstated. Petitioner ignores that Congress authorized the Department of Homeland Security to promulgate regulations for the ongoing supervision of aliens who are not removed within 90 days. *See* 8 U.S.C. § 1231 (a)(3). Those regulations specifically provide that DHS may redetain an alien beyond the removal period in various circumstances, including if DHS determines that the alien has violated his conditions of supervision. *See* 8 C.F.R. § 241.4(1). Additionally, under 8 U.S.C. § 1231 (a)(6), an alien ordered removed who is inadmissible under section 1182 or has been determined by the Attorney General to be a risk to the community or unlikely to comply with the removal order, may be detained. Here, Petitioner meets all three of the requirements making him subject to 1231(a)(6) due to his prior criminal convictions and his repeated re-entries into the United States following deportation.

Petitioner's order of supervision in 2020 required compliance with ATD. Within the past year alone, Petitioner has violated those conditions on four occasions. DHS reasonably determined that Petitioner had violated his conditions of release. His redetention, therefore, was authorized by statute and regulation. Petitioner's argument to the contrary would lead to the absurd result that Congress failed to provide DHS with the authority to redetain aliens who violated the conditions of their release. Petitioner supplies no reason to think that Congress intended such a result. Nor could he, since Congress plainly did authorize detention in these circumstances. *See* 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.4(l).

B. Petitioner's Redetention Does Not Violation Due Process

The Supreme Court has squarely held that noncitizens in Petitioner's procedural posture—those subject to reinstated removal orders pending an immigration judge's withholding of removal determination—are subject to detention under § 1231 and "are not entitled to a bond hearing while they pursue withholding of removal." *Guzman Chavez*, 594 U.S. at 526; *see also, e.g.*, *Arteaga-Martinez*, 596 U.S. at 581 (rejecting argument that § 1231(a)(6) "require[s] an initial bond hearing" "at the outset of detention"). And that textual holding is reinforced by the Supreme Court's prior determinations that, so

long as it is not prolonged, detention to effectuate removal is generally constitutionally permissible.

Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner's substantive due process claim therefore fails. *See Demore*, 538 U.S. at 531; *see also Zadvydas*, 533 U.S. at 701 (recognizing a "presumptively reasonable period of detention" of up to six months to effectuate a final removal order).

True, noncitizens held under § 1231 may be able to obtain review of their detention after six months when their removal is no longer reasonably foreseeable to avoid the constitutional problems with "prolonged" detention. *See Zadvydas*, 533U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by [§ 1231(a)]."); *but see Arteaga-Martinez*, 596 U.S. at 580-82 (rejecting claim that statutory text of § 1231(a)(6) required periodic bond hearings every six months). But Petitioner does not and cannot argue that his detention has become prolonged, or that his removal is not reasonably foreseeable at this time. Indeed, Petitioner was only detained initially in 2020 for approximately three months. *See* Dkt. No. 3 at 3. Therefore, Petitioner's redetention under § 1231(a)(6) without a pre-detention hearing does not violate his right to due process. *See Giorges v. Kaiser, et al.*, No. 5:25-cv-07683-NW, Dkt. No. 17 at 10 (N.D. Cal. Oct. 10, 2025) (§ 1231(a)(6) "provides no indication that the detainee is entitled to a pre-detention bond hearing").

Additionally, Petitioner was temporarily released from custody during COVID as a result of the *Zepeda Rivas* litigation. By its terms, this release was always temporary and of a finite duration. His initial release was subject to the mandatory, court-ordered condition that it would "expire upon the final adjudication of the habeas petition in this case[.]" *See Zepeda Rivas*, Dkt. No. 369. Under the settlement agreement negotiated between the parties and applicable to all class members, including Petitioner, ICE was specifically authorized to re-detain class members as usual after beginning three years following approval of the settlement. *See Zepeda Rivas* Dkt. No. 1205-1 at 16 (Subsection III(G)). The settlement was approved by the court on June 9, 2022. *See Zepeda Rivas* Dkt. No. 1258. As such, ICE was specifically authorized to re-detain temporarily release class members beginning June 9, 2025. Petitioner never had any reasonable expectation that his release would continue indefinitely, or that ICE would be constrained from re-detaining him after the three-year term ended.

1. Petitioner Does Not Have A Protected Liberty Interest Entitling Him To Additional Process.

Petitioner does not have a protected liberty interest in making permanent a release that was, by its terms, only temporary. That Petitioner had been temporarily released under *Zepeda Rivas* does not create a new liberty interest that takes him out of the *Demore* paradigm. Indeed, the petitioner in *Demore* was returned to custody following the Supreme Court's decision in that case after having been released nearly four years, yet the Court imposed no requirement of a pre-detention hearing. Any expectation of continued liberty here, moreover, would not be reasonable. Petitioners were released from detention *temporarily,* in response to the extraordinary circumstances of the COVID pandemic. By its own terms and by court order, that release was always finite and non-permanent, with a definite termination point of June 9, 2025. *See Giorges*, No. 5:25-cv-07683-NW, Dkt. No. 17 at 13 (petitioner released under *Zepeda Rivas* could not reasonably claim that such release created a liberty interest).

In *Giorges*, the Court analogized *Zepeda Rivas* petitioners to the petitioner in *Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022. *See Giorges*, No. 5:25-cv-07683-NW, Dkt. No. 17 at 12. In *Uc v. Kaiser*, petitioner in was released from detention by an Immigration Judge after a bond hearing, where the Immigration Judge found that ICE had not met its

burden. ICE appealed to the BIA, which reversed. Uc then sought a TRO to enjoin his re-detention without further process before an Immigration Judge. Judge Breyer denied this request. Although the court noted that "Uc's conduct while on bond was beyond reproach," it also observed that "Uc's release on bond "was always subject to direct review and, therefore, the possibility of reversal." 2022 WL 9496434, at *2. Accordingly, the court found that the petitioner's liberty interest was less weighty and "did not entitle him to an additional bond hearing with an IJ before he [could] be redetained following the BIA's order reversing his release on bond." *Id.* at *5. The Court in *Giorges* found that the same reasoning applied to the *Zepeda Rivas* class, where the settlement agreement had an expiration date and, therefore, release was always temporary. *Giorges*, No. 5:25-cv-07683-NW, Dkt. No. 17 at 13.

The *Zepeda Rivas* class, which included Petitioner, was represented by a team of lawyers, and the terms of the settlement agreement were rigorously negotiated. That agreement could have specified that detention following the three-year period would require a pre-detention hearing. But it did not. No conditions whatsoever were imposed on DHS's ability to re-detain class members following the termination of the three-year term. The only conditions on re-detention were imposed *during* the three-year term—and even those conditions did not include any *pre-detention* process. *See Zepeda Rivas*, Dkt. No. 1205-1, at 13–14, 18–19.

Petitioner always knew that this release would not be permanent, that he was subject to detention following his order of removal, and that DHS would not be constrained from re-detaining him after the end of the three-year settlement term. Accordingly, Petitioner could have had no reasonable expectation of continued release after the termination of the three-year period. The government recognizes that any form of detention could be said to implicate an individual's liberty interests, and that petitioner, like virtually everyone subject to detention, has reasons for wanting to remain out of custody. But those reasons do not create a protectible liberty interest in Petitioner's continued release here, in light of the specific circumstances and terms of his temporary release.

2. Under the *Mathews* Factors, No Additional Process Is Warranted Here.

The government does not concede that *Mathews v. Eldridge* applies here, given "the unique constitutional treatment of detained aliens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir.

2022). Aliens detained pursuant to § 1231 "are not entitled to a bond hearing while they pursue withholding of removal." *Guzman Chavez*, 594 U.S. at 526. The *Zepeda Rivas* settlement agreement preserved that framework and contemplated that detention according to this generally applicable law would resume following the three-year settlement term. Although Petitioner urges this Court to evaluate this case under the traditional *Mathews* factors, a *Mathews* analysis is not appropriate here, where Supreme Court jurisprudence and the terms of Petitioner's release make clear that no additional process is necessary.

In the event that the Court elects to analyze Petitioner's claim under *Mathews*, the Court should find, consistent with the analysis above, that Petitioner is not entitled to relief. Under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), courts consider three factors in evaluating a procedural due process claim: the plaintiff's private interest, the risk of erroneous deprivation without additional procedures, and the government's interest. While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to discretionary immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206. Against this backdrop, the three factors weigh against the additional process Petitioners requests here.

(i) Petitioners' history and status reduce their liberty interest.

First, Petitioner's liberty interest is reduced by the fact that he is an alien subject to a final order of removal who violated the conditions of his release. *See Uc Encarnacion*, 2022 WL 9496434, at *3 (holding released noncitizen had a reduced liberty interest where he "always knew that his release was subject to appellate review"); *see also Rodriguez Diaz* 53 F.4th at 1206-08.

Indeed, that is especially true in light of Petitioner's particular circumstances here. Petitioner has unlawfully entered the country at least three times. He is subject to an administratively final order of removal. Although he can seek withholding of his removal to the specific country of Guatemala, he cannot challenge the order of removal itself. *See Guzman Chavez*, 594 U.S. at 531, 535. And again, he violated the specific conditions of the very order of release on which his liberty was based. All of these factors reduce Petitioner's liberty interest here. *See Rodriguez Diaz*, 53 F.4th at 1206-08.

Petitioner wrongly argues that his liberty interest is actually heightened here because he was conditionally released in 2020. That is mistaken. Petitioner has never been granted any form of lawful status in the United States; his release was always subject to revocation, as explicitly stated in the settlement agreement, and including if Petitioner violated the conditions of his release, as he in fact did here. Petitioner's conditional release does not somehow increase the strength of his liberty interest now. *See Uc Encarnacion*, 2022 WL 9496434, at *3. This case is also fundamentally unlike cases like *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny, where U.S. citizens were released from custody in other contexts, such as post-sentence parole: "The recognized liberty interests of U.S. citizens and aliens are not coextensive." *Rodriguez Diaz*, 53 F.4th at 1206; *see also Uc Encarnacion*, 2022 WL 9496434, at *3 ("Morrissey involved subsequent revocation of post-release parole for alleged violation of parole conditions, not appellate review of the original decision to parole the petitioner.").

(ii) The risk of erroneous deprivation is minimal.

Second, the risk of erroneous deprivation of Petitioner's liberty here is minimal. *See Rodriguez Diaz*, 53 F.4th at 1209; *Uc Encarnacion*, 2022 WL 9496434, at *4. There is no dispute that § 1231 authorizes detention to effectuate an individual's removal. *See, e.g.*, *Guzman Chavez*, 594 U.S. at 526; *see also Zadvydas*, 533 U.S. at 701. The Supreme Court has long upheld the legality of such detentions. Petitioner has made no argument that § 1231 does not apply here. And existing agency procedures sufficiently protect Petitioner's liberty interest and mitigate the risk of erroneous deprivation. *See Rodriguez Diaz*, 53 F.4th at 1209; *see also* 8 C.F.R. §§ 241.13(d)(1) & (j).

Petitioner ignores that Justice Sotomayor, in her Statement Respecting the Disposition of the Application in *Noem v. Abrego Garcia*, specifically identified 8 C.F.R. § 241.4(l) as part of the "[f]ederal law governing detention and removal of immigration" that continues to be binding on ICE. *Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Statement of Sotomayor, J.). Describing these requirements, Justice Sotomayor wrote that "in order to revoke conditional release, the Government must provide adequate notice and 'promptly' arrange an 'initial informal interview . . . to afford the alien an opportunity to respond to the reasons for the revocation stated in the notification." *Id.* And that is precisely what happened here under Petitioner's notice of revocation pursuant to 8 C.F.R. § 241.4.

But significantly, these procedures do not require any pre-revocation hearing. And logically so: detention in these circumstances is a resumption of post-removal-period detention under § 1231(a), which is constitutionally permitted without a pre-detention hearing. For this Court to find in favor of Petitioner on the merits, it would need to conclude that the procedural protections which Petitioner received under 8 C.F.R. § 241.4(l) are constitutionally insufficient—essentially a finding that the regulation is facially unconstitutional. Petitioner has certainly not established as much here. Respondents are aware of no case, in this District or elsewhere, so holding. And Justice Sotomayor's statement in *Abrego Garcia* signals just the opposite: her citation of 8 C.F.R. § 241.4(l) implies *approval* of these procedural protections. Notably missing from her description of the regulation was any suggestion that these procedures are insufficient or that an extra-regulatory pre-revocation hearing before an immigration judge would be constitutionally required.

Other courts have similarly held that the revocation of release under § 241.4(l) does not violate due process. *See, e.g.*, *Roe v. Oddo*, No. 3:25-cv-128, 2025 WL 1892445, at *8 (W.D. Pa. July 9, 2025) ("[C]ompliance with [8 U.S.C. § 1231 and 8 C.F.R. § 241.4] satisfies the requirements of procedural due process"); *Moran v. DHS*, No. 20-cv-00696-DOC, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing claim that § 241.4(l) violated procedural due process).

Moreover, the specific additional procedures that Petitioner requests—a pre-detention hearing before an immigration judge, at which the government would have the burden of proof, by clear and convincing evidence that Petitioner is neither a flight risk nor danger to the community—are unwarranted. As the Ninth Circuit announced in *Rodriguez Diaz*, "We are aware of no Supreme Court case placing the burden on the government to justify the continued detention of an alien, much less through an elevated 'clear and convincing' showing." *Id.* at 1212. To the extent a bond hearing is ordered by the Court, there is no good reason to impose such a heightened requirement on the government, especially where this additional process would supplant a congressional determination that aliens like Petitioners should be detained without any individualized determination of danger or flight risk.

(iii) The government has a strong interest in detention pending removal.

Turning to the third *Mathews* factor, the Ninth Circuit has held that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "There is always a public interest in prompt execution of removal orders…" *Nken v. Holder*, 556 U.S. 418, 436 (2009). And the Supreme Court has recognized that "aliens who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order." *Guzman Chavez*, 594 U.S. at 544; *see also Rodriguez Diaz*, 53 F.4th at 1208-09 & n.8 (noting that "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent"). The government has a strong interest in protecting the community from Petitioner until he can be removed from the country for the third time.

Moreover, Petitioner's request for an additional level of review would impose administrative and resource burdens on the government that would frustrate its ability to take congressionally authorized detention and removal actions. Congress has determined that the Executive Branch may detain noncitizens ordered removed without providing them a pre-detention bond hearing. Every extra hearing before an Immigration Judge adds further congestion to an already backlogged immigration-court system. It drains limited Executive Branch resources. The government has a significant interest in avoiding these extraregulatory burdens. *See Uc Encarnacion*, 2022 WL 9496434, at *4-5 (additional bond hearing would "thwart the Congressional design").

In short, the three *Mathews* factors weigh decidedly against granting Petitioner the additional,

II. Petitioners Fail to Show Cognizable, Irreparable Harm.

In addition to his failure to show a likelihood of success on the merits, Petitioner does not meet his burden of showing he will be irreparably harmed in the absence of a preliminary injunction. Petitioner asserts that injury will result if he is not offered a bond hearing because he is the breadwinner for his family. Dkt. No. 3 at 16. However, Petitioner's claimed injuries arise from possible *detention*, not from the absence of a bond hearing. He thus offers no explanation for how those claimed injuries would be prevented by a preliminary injunction which—even if granted—could still result in his re-detention

following notice and a hearing. Especially given that Petitioner is subject to a removal order has a history of ATD violations. Petitioners' detention is thus not a cognizable harm.

In any event, the alleged infringement of Petitioner's constitutional rights is insufficient when—as here—Petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of [his] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm").

III. Neither the Balance of Equities Nor Public Interest Favor Petitioners.

When the government is a party, the last two factors that Petitioners must establish to obtain a preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken*, 556 U.S. at 435). Here, for the same reasons that Petitioners have not shown the *Mathews* factors favor his requested additional process, Petitioners have not shown that a preliminary injunction barring his re-arrest and detention without a hearing is in the public interest. To the contrary, the public interest lies squarely in honoring Congress's mandate that aggravated felons be detained. *See Demore*, 538 U.S. at 520; *see also Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws). Petitioners' claimed harm to themselves cannot outweigh this public interest in application of the law, particularly since courts "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) (citation omitted).

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CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the motion for a preliminary injunction and habeas petition.

DATED: October 30, 2025,

Respectfully submitted,

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/s/ Molly A. Friend
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