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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HENRI BA,

Petitioner,

v.

TODD LYONS, et al.,

Respondents.

Case No.: 25-cv-2871-CAB-BJW

RESPONDENTS' HABEAS RETURN AND OPPOSITION TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER (ECF NO. 2)

INTRODUCTION

Petitioner, Henri Ba, a citizen of Senegal, is detained at the Otay Mesa Detention Center in San Diego, California pursuant to 8 U.S.C § 1226(a). ECF No. 2-1, 2; Ex. A, Declaration of Rogelio

Nunez, (Nunez Decl.), ¶¶ 5, 30 (pp. 3, 5)[1]. Mr. Ba was remanded to U.S. Immigration and Customs Enforcement (ICE) custody on August 19, 2025, during a supervised release check-in appointment. *Id.* at ¶ 30 (p. 5). Mr. Ba filed a Petition for Writ of Habeas Corpus (ECF No. 1) ("Petition") and *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause (ECF No. 2) ("TRO Application") on October 24, 2025. In his habeas petition, Petitioner argues that his re-detention violates the Fourth Amendment, Fifth Amendment, and the Administrative Procedure Act (APA). Petition ¶ 6. Petitioner seeks immediate release either under habeas or an injunctive order, as well as an order enjoining Respondents from re-detaining Petitioner without a pre-detention hearing before an Immigration Judge. Petition, Prayer for Relief. Petitioner's TRO Application seeks the same relief, as well as an order enjoining Respondents from relocating Petitioner outside the District. TRO Application 10-11.

On October 24, 2025, the Court issued a Show Cause Order for Respondents to file a response to the Petition by October 31, 2025, and for Petitioner to file an optional traverse in support of his petition by November 7, 2025. Order to Show Cause, ECF No. 3, at 2. The Court did not order Respondents to respond to Petitioner's TRO Application, but Respondents address the application here as well.[2]

The Court should deny the habeas petition because Petitioner fails to establish that his detention is in violation of the Constitution and further fails to meet his heavy burden to establish entitlement to the issuance of a TRO. Petitioner argues Respondents violated his Fourth Amendment rights because there was no probable cause for his arrest, that Respondents violated his Fifth

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[1] References to page numbers refer to the pagination at the bottom right corner of Respondents' exhibits.

[2] Respondents file this Opposition because the Court has not yet ruled on Respondents' motion to extend the time to respond. ECF No. 8. Respondents do not waive the arguments made in that motion that the Court should not grant Petitioner relief before the administrative process is exhausted.

Amendment Due Process rights because he was re-detained after remaining free from detention on an Order of Recognizance (OREC) without notice and a pre-detention hearing, and that his arrest and detention violate the APA because Respondents previously moved an immigration court to dismiss his removal proceedings. Petition ¶¶ 21, 27, 30. All of Petitioner's arguments fail as a matter of law.

Petitioner misapplies the Fourth Amendment's protections in the immigration detention context, because he was not stopped and questioned without probable cause. Instead, he was arrested on an administrative warrant based on his lack of a lawful status to remain in the United States. Ex. B, Warrant of Arrest, Form I-200 (p. 8). Petitioner's Fifth Amendment Due Process claim is also misplaced, because Respondents relied on a change in circumstance since Petitioner's 2004 release on OREC to justify re-detaining him, namely an immigration judge's finding that Petitioner provided material support to a terrorist organization. Ex. A, Nunez Decl., ¶ 29 (p. 5). Petitioner's APA claim fails for the same reason. The APA claim is also belied by Petitioner's own evidence, as it shows Respondents did not move the immigration court to dismiss his removal proceedings before re-arresting him. For all of these reasons, Petitioner cannot show a likelihood of success to obtain the extraordinary relief of an emergency temporary restraining order.

In sum, Petitioner's Habeas Petition and TRO Application should be denied.

FACTUAL AND PROCEDURAL HISTORY

Petitioner, Henri Ba, is a citizen and national of Senegal. Ex. A, Nunez Decl., ¶ 5 (p. 3). On May 27, 1998, Petitioner was admitted into the United States at New York, New York as a nonimmigrant. *Id.* at ¶ 6. On or about July 11, 2000, Petitioner changed his nonimmigrant status and was authorized to remain in the United States on a student visa (F-1) to attend City College of San Francisco, California. *Id.* at ¶ 7. On or about June 15, 2002, Petitioner failed to maintain his nonimmigrant status. *Id.*

In the interim, on or about March 9, 2001, Petitioner filed an application for asylum with the U.S. Citizenship and Immigration Services (USCIS). *Id.* at ¶ 8. On or about September 2, 2002, USCIS

issued a Notice of Intent to Deny (NOID) that application. *Id.*; Ex. C, NOID (pp. 10-15.) On November 4, 2002, USCIS referred Petitioner's asylum application to the Executive Office for Immigration Review (EOIR) with the issuance of a Notice to Appear (NTA). *Id.* at ¶ 9; ECF No. 2-2, Tab J. Petitioner was charged with removal from the United States pursuant to § 237(a)(1)(C)(i) of the Immigration and Nationality Act (INA), as an alien who was admitted as a nonimmigrant and failed to maintain status or failed to comply with the conditions of the nonimmigrant status. *Id.*

On October 25, 2004, U.S. Immigration and Customs Enforcement (ICE) arrested Petitioner pursuant to a Warrant for Arrest, Form I-200, and served with the NTA. *Id.* at ¶ 10 (p. 3); Ex. B (p. 8). He was detained at Otay Mesa Detention Center (OMDC) in San Diego, California. *Id.* On October 28, 2004, Petitioner was transferred to Florence Service Processing Center (FSPC) in Florence, Arizona. *Id.* at ¶ 11. On November 1, 2004, ICE filed Petitioner's NTA and request for custody review, Form I-286, Notice of Custody Decision, with the EOIR in Florence, Arizona. *Id.* at ¶ 12 (p. 4); Pet'r's. Opp. To Resps's. Mot. For Ext. of Time, ECF No. 9, Ex. A at 12. On November 10, 2004, an Immigration Judge (IJ) released Petitioner from ICE detention on an Order of Recognizance (OREC). *Id.* at ¶ 13 (p. 4); Ex. D, OREC (pp. 17-19). On that same date, ICE released Petition on OREC and later transferred his immigration case to the San Diego, California, EOIR. *Id.* at ¶ 14; Ex. E, Notice to EOIR 11/2004 (p. 21). On January 23, 2006, the San Diego Enforcement and Removal Operations (ERO) Field Office mistakenly amended his OREC release to an Order of Supervision (OSUP), Form I-220B. *Id.* at ¶ 15; Ex. F, OSUP (pp. 23-32).[3]

On July 5, 2007, an immigration judge denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") and ordered him removed to Senegal. Ex. G, Decision of the Board of Immigration Appeals (Feb. 8, 2013), at 36. The

[3] An OSUP is issued when an individual is released from ICE custody with a final removal order or is subject to a final order of removal. Ex. A, ¶ 15 (p. 4). On January 23, 2006, Petitioner was not subject to a final order of removal or released from ICE custody with a final order of removal. *Id.*

immigration judge determined that Petitioner failed to credibly rebut findings that Petitioner provided material support to a terrorist organization while living in Senegal, the Movement of Democratic Forces in the Casamance (MFDC).[4] *Id.*

Petitioner timely appealed that decision to the Board of Immigration Appeals (BIA). *Id.* The BIA affirmed and dismissed his appeal on March 4, 2009, rendering that order of removal final. *Id.*; Ex. A, Nunez Decl. at ¶ 17 (p. 4); *see* 8 U.S.C. § 1101(a)(47)(B)(i)-(ii). On March 4, 2009, Petitioner filed a Motion to Reopen (MTR) removal proceeding with the BIA to apply for Adjustment of Status (AOS) to that of a Lawful Permanent Resident. Ex. A, Nunez Decl. at ¶ 18 (p. 4).

On January 29, 2010, the Board of Immigration Appeals granted reopening and remanded to the immigration court to consider Petitioner's application and new arguments in defense of his actions supporting the MFDC. *Id.* at ¶ 19; Ex.G, BIA Dec. 2013 at 36. The immigration judge "found once again that [Petitioner] lacked credibility," and the BIA agreed. *Id.*

> The Immigration Judge found in his first decision that the respondent had changed his claim from being a member of the MFDC who participated in many activities in support of that organization, including recruitment and selling membership cards to raise funds for the MFDC, to someone who was minimally involved and did not recruit members or provide funds to the MFDC. The Immigration Judge found in the February 15, 2011, decision that the respondent has provided additional inconsistent testimony to try to minimize his past involvement with the MFDC.

Id. On February 15, 2011, the immigration judge denied Petitioner's application to adjust status and Petitioner timely appealed that decision to the BIA. Ex. A, Nunez Decl. at ¶ 20 (p. 5). On February 8, 2013, the BIA dismissed the appeal and Petitioner's removal order once again became final. *Id.* at ¶ 21; Ex. G, BIA Dec. 2013 at 37.

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[4] Any alien who has engaged in a terrorist activity, which is defined, in relevant part, as the commission of an act "that the actor knows, or reasonably should know, affords material support, including... funds ... to a terrorist organization described in clause (vi)(III), or to any member of such an organization, unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization," is inadmissible. 8 U.S.C. §§ 1182(a)(3)(B)(i)(I), (a)(3)(B)(iv)(VI)(dd).

On March 8, 2013, Petitioner filed a Petition for Review (PFR) with the Ninth Circuit Court of Appeals. Ex. A, Nunez Decl. at ¶ 22 (p. 5). On that same date, the Court issued a Temporary Stay of Removal, pending a decision on the PFR. *Id.*, ¶ 23. On January 17, 2020, the Court granted Petitioner's PFR on the basis that the inconsistencies in Ba's testimony related to his material support for terrorism did not "go to the heart of Ba's claim of past persecution" based on his ethnicity. *See* Memorandum, Ninth Circuit Court of Appeals, Jan. 17, 2020, ECF No. 2-2, at 9-10. The Ninth Circuit remanded to the BIA for further consideration of Petitioner's credibility related to his claims of persecution, noting "[w]e express no views on the applicability of the statutory terrorism bar, which the government may assert on remand." *Id.* at 8 n.1, 10-11.

On October 1, 2020, the BIA remanded the case back to EOIR "for further proceedings consistent with the Ninth Circuit's decision." *Id.* at 19. However, the immigration judge determined of its own accord that termination of Petitioner's proceedings was necessary due to "procedural irregularities" in the issuance of the Nov. 4, 2002 NTA, which "does not include the date or time for Respondent's initial master calendar hearing." *Id.* at 21. Although "the Department of Homeland Security's position . . . [was] that it was appropriate to proceed in the matter as a better use of court resources," the immigration judge *sua sponte* terminated removal proceedings on May 8, 2023. Ex. A, Nunez Decl. at ¶ 26 (p. 5). Petitioner appealed to the BIA on June 6, 2023. *Id.* at ¶ 27. That appeal remains pending. *Id.*

On August 19, 2025, Petitioner reported to the ERO San Diego Field Office pursuant to his OREC reporting requirements. *Id.* at ¶ 28. At that time, ERO San Diego reviewed Petitioner's case and determined Petitioner should be re-detained. *Id.* at ¶ 29. ERO considered that Petitioner has two final orders of removals since his release and took into consideration the seriousness of the national

security inadmissibility findings under 8 U.S.C. § 1182 (a)(3)(B)[5] and determined that a material change in circumstances had occurred. *Id.*

On that same date, Petitioner was remanded back to ICE custody at OMDC pursuant to a Warrant of Arrest, Form I-200, pending completion of his removal proceedings. *Id.* at ¶ 30. Petitioner remains detained pursuant to 8 U.S.C. § 1226(a). *Id.* At that time, Petitioner requested a custody review by an immigration judge on the Notice of Custody Determination, Form I-286. *Id.* at ¶ 31; ECF No. 9, Ex. A at 12.

On October 24, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus and *Ex Parte* Application for a Temporary Restraining Order. ECF Nos. 1, 2. On the same day, this Court ordered the Federal Respondents to respond to the Habeas Petition and TRO Application by Friday, October 31, 2025. ECF No. 3. On October 27, 2025, the parties filed a Joint Motion for Extension of Time through and including Monday, November 3, 2025. ECF No. 5. On October 29, 2025, the Court granted the joint motion. ECF No. 7.

On October 31, 2025, ERO at the OMDC suboffice filed the Form I-286 with the OMDC EOIR. Ex. A, Nunez Decl. at ¶ 32 (p. 6). Petitioner is scheduled for a bond hearing before an immigration judge on November 6, 2025, at 8:30 a.m. *Id.* at ¶ 33. On October 31, 2025, Respondents filed a Motion for Extension of Time to file a response to the Habeas Petition and TRO Application to allow a decision on Petitioner's bond hearing on November 6, 2025. ECF No. 8. Petitioner objected to the motion on October 31, 2025. ECF No. 9. That motion remains pending.

STANDARD OF REVIEW

I. Writ of Habeas Corpus

It is unchallenged that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp.*

[5] INA § 212(a)(3)(B).

v. Allopath Servs., Inc., 545 U.S. 546, 552 (2005) (internal quotation omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day . . . ." *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

Habeas Corpus Rule 2(c), which the Court should apply in this 28 U.S.C. § 2241 action, "provides that the petition must 'specify all the grounds for relief available to the petitioner' and 'state the facts supporting each ground.'" *Mayle v. Felix*, 545 U.S. 644, 655 (2005) (quoting Rules Governing Section 2254 Cases in the United States District Court ("Habeas Rules")); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief."). Petitioner bears the burden to prove he is entitled to the granting of the writ of habeas corpus by demonstrating that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

Where it "plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition." *Trollope v. Vaughn*, No. CV1803902JLSJDE, 2018 WL 3913922, at *2 (C.D. Cal. 2018) (citing Habeas Rules 1, 4). Similarly, "if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007).

II. Temporary Restraining Order

The standard for issuing a temporary restraining order and a preliminary injunction are substantially identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A TRO is "an extraordinary and drastic remedy . . . that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success

on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

ARGUMENT

I. Petitioner's Habeas Petition Should Be Dismissed.

The Court should deny Petitioner's habeas petition because Petitioner, as an alien who failed to maintain a lawful status, is properly detained pending the conclusion of his removal proceedings. *See* 8 U.S.C. §§ 1226(a), (b). Petitioner has failed to establish that his detention is unlawful on the basis that "[t]here has been no change in Petitioner's circumstances that would subject Petitioner to re-detention." Petition ¶ 5. There has in fact been a change in circumstances that justifies Petitioner's redetention and the Court lacks jurisdiction to review the decision any further. 8 U.S.C. § 1226(e) ("No court may set aside any action or decision by the [Secretary of Homeland Security] under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.").

Courts in this district rely on the BIA decision in *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), for the proposition that once an alien has been ordered released by an immigration judge, DHS cannot re-detain him without showing a change in circumstances. *See, e.g., Van Tran v. Noem*, 2025 WL 2770623, at *3 (S.D. Cal. 2025); *Sanchez v. LaRose*, 2025 WL 2770629, at *3 (S.D. Cal. 2025) ("To satisfy due process, those changed circumstances must represent individualized legal justification for detention."). The Ninth Circuit has not weighed in on what constitutes "changed circumstances," but the findings in *Sugay* support Respondents here. In *Sugay*, the BIA found that "newly developed evidence brought out at the deportation hearing, combined with the fact that the respondent has been ordered deported and his applications for suspension and withholding of deportation were denied"

represented a "considerable change in circumstances which justify the District Director's decision to raise the amount of bond." *Matter of Sugay*, 17 I. & N. Dec. at 640. The same is true here.

As explained above, in his removal proceedings and subsequent to being released on OREC, Petitioner was found to have provided material support for a terrorist organization. Ex. G, BIA Dec. 2013 at 35. With each opportunity to rebut that finding, Petitioner has instead dug himself a deeper hole. In his first immigration proceedings, the immigration judge found Petitioner lacked credibility "due to a detailed declaration presented by [Petitioner] (after he had been put on notice that the terrorist bar may apply) which differed radically from the claim presented in his asylum application and at his asylum interview, and his nervous and evasive demeanor." *Id.* In his second immigration proceeding, the immigration judge found "that the respondent has provided additional inconsistent testimony to try to minimize his past involvement with the MFDC." *Id.* at 37. On appeal, the BIA agreed:

> The respondent's contention that his support for the MFDC preceded that organization's participation in terrorist activities, which he asserts began in 1991, is inconsistent with his December13,2001, interview with an asylum officer, in which the respondent claimed to have become a member of the MFDC in December 1993, to have maintained his membership until his arrest in 1996, and to have recruited members, performed office work, attended meetings and demonstrations, and put nails in the road to stop the vehicles of government forces seeking to arrest or kill MFDC members.

Id.

While the Ninth Circuit granted Petitioner's Petitioner for Review and remanded the case for further consideration, it did not disturb these findings. Rather, the Ninth Circuit found "the discrepancies regarding whether Ba sold MFDC membership cards or encouraged others to join the organization are neither substantial nor go to the heart of [Petitioner's] claims of past persecution . . . due to his Diola ethnicity." ECF No. 2-2 at 9 (internal citations and quotations omitted). The finding that Petitioner provided material support to a terrorist group remains valid and Respondents lawfully relied on that finding, along with the development of a final order of removal, as a change in circumstances warranting Petitioner's redetention. *Matter of Sugay*, 17 I. & N. Dec. at 640.

The Fourth Amendment is no help to Petitioner here. The Supreme Court and Ninth Circuit have held that, "consistent with the Fourth Amendment, immigration authorities may arrest individuals for civil immigration removal purposes pursuant to an administrative arrest warrant issued by an executive official, rather than by a judge. *Gonzalez v. ICE*, 975 F.3d 788, 825 (9th Cir. 2020) (citing *Abel v. United States*, 362 U.S. 217, 230-34 (1960)). Petitioner's reliance on *Sanchez v. Sessions*, 904 F.3d 643 (9th Cir. 2018), is of no avail. Petition ¶ 21. *Sanchez* stands only for the proposition that an immigration officer, before stopping an individual for questioning, must have a "reasonable suspicion, based on specific articulable facts, that the person being questioned is . . .an alien illegally in the United States." *Id.* at 651 (citing 8 C.F.R. § 287.8(b)(2)). Petitioner was not stopped for questioning, but was arrested with an administrative warrant detailing the charge against him: violation of 8 U.S.C. § 1227(a)(1)(C)(i), as an alien with no lawful status. Ex. A, Nunez Decl. ¶ 30; Ex. B, Form I-200, Arrest Warrant. Petitioner does not dispute that he is removable and he does not challenge the sufficiency of the administrative warrant served at the time of his arrest. *See also Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483-84 (1999) ("*AADC*") ("Even when deportation is sought because of some act the alien has committed, in principle the alien is not being punished for that act (criminal charges may be available for that separate purpose) but is merely being held to the terms under which he was admitted.").

Nor is Petitioner's nearly 4-month detention constitutionally prolonged. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (no constitutional violation in detention of more than three years under § 1226(a)). Even with Petitioner's final order of removal re-opened and pending a third appeal before the BIA, the government retains an interest in assuring his presence at removal. *Id.* Indeed, an immigration judge and the BIA have already denied Petitioner's requested relief and ordered him removed twice, Ex. A, Nunez Decl. at ¶¶ 16, 17, 20, 21 (pp. 4-5), and the finding that Petitioner provided material support for a terrorist

organization remains in effect. Given these facts, Petitioner's detention "serve[s] its purported immigration purpose." *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

Absent a showing of a constitutional violation, Petitioner's habeas petition must be dismissed. *Demore v. Kim,* 538 U.S. 510, 516 (2003) (8 U.S.C. § 1226(e) precludes an alien from "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release."). To the extent the Court may find Petitioner is entitled to additional process, the bond hearing scheduled for November 6, 2025, will provide Petitioner with an opportunity to challenge his detention and potentially obtain release. The Court should not impose a greater remedy here than the law allows an alien who has failed to maintain lawful status. The Supreme Court found, in the context of a First Amendment challenge to the decision to initiate removal proceedings, that even if the government violated the First Amendment, the remedy should not allow the underlying "*ongoing violation* of United States law" to continue. *AADC*, 525 U.S. at 491 (emphasis in original).

The pending bond hearing also counsels the Court to deny the Petition for failure to exhaust administrative remedies. *See* Resps's Mot. for Ext., ECF No. 8 at 3 (citing *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993, 1003 (N.D. Cal. 2018)). Petitioner's arguments in opposition are purely speculative. *See* Opposition, ECF No. 9, at 5 ("*it is almost certain* Respondents would invoke the stay of Petitioner's release on any bond, and Petitioner's liberty would continue to be erroneously deprived.") (emphasis added). The Court cannot grant habeas relief on possible future outcomes, and certainly not the extraordinary relief of a TRO. *See Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025) (holding a claim is unripe if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all.").

II. Petitioner's Motion for a Temporary Restraining Order Should Be Dismissed.

A. Petitioner is unlikely to succeed on the merits of his claims.

In a motion for preliminary injunction, "[l]ikelihood of success on the merits is 'the most important' factor; if a movant fails to meet this 'threshold inquiry,' we need not consider the other factors." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018); see also *Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1031 (9th Cir. 2024) (ending the analysis of a preliminary injunction motion after concluding movants failed to show a likelihood of success on the merits or serious questions on the merits). This holds especially true "where a [movant] seeks a preliminary injunction because of an alleged constitutional violation." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

In his Petition and subsequent motion for injunctive relief, Petitioner claims that his detention violates the Constitution and U.S. laws because "[t]here has been no change in Petitioner's circumstances that would subject Petitioner to re-detention." Pet. ¶ 5. However, as explained above, there has been a change in circumstances that justifies Petitioner's re-detention that the Court lacks jurisdiction to review pursuant to 8 U.S.C. § 1226(e). Thus, because Petitioner is unlikely to succeed on any of his claims, the Court should deny Petitioner injunctive relief.

B. Even if the Court considers the other injunctive relief factors, Petitioner fails to satisfy them.

Because Petitioner fails to show that he is likely to succeed on the merits of his claims, the court's inquiry into whether to grant injunctive relief should end. *See Azar*, 911 F.3d at 575. However, even if the court considered the remaining three factors, Petitioner fails to satisfy them.

First, Petitioner fails to show how he will face irreparable harm absent the grant of injunctive relief. "A plaintiff seeking preliminary relief must 'demonstrate that irreparable injury is likely in the absence of an injunction.'" *Azar*, 911 F.3d at 581. Although Petitioner claims he is subject to irreparable harm in confinement, Petitioner has failed to establish a violation of any constitutional rights. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (holding that a violation of constitutional rights is an irreparable injury); *cf. Apartment Ass'n of Los Angeles Cnty., Inc. v. City of*

Los Angeles, 500 F. Supp. 3d 1088, 1100–01 (C.D. Cal. 2020), aff'd, 10 F.4th 905 (9th Cir. 2021) (holding there was no irreparable harm where petitioner was unlikely to succeed on the merits of their constitutional claim). Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom.*, *Diaz Reyes v. Mayorkas*, Fed. App'x. 191 (9th Cir. 2021). And Petitioner fails to show the need for independent injunctive relief because the habeas petition, as well as the upcoming bond hearing, have the potential to result in the same relief sought in the TRO motion: release from custody. *See Sires v. State of Wash.*, 314 F.2d 883, 884 (9th Cir. 1963) (denying a preliminary injunction motion because Petitioner failed to show how any relief he was entitled to could not be fully realized during habeas corpus proceedings without the grant of an injunction).

Next, Petitioner fails to show how the balance of equities and public interest weighs in his favor. These factors merge when the Government is a party. *Azar*, 911 F. 3d at 575. Although Petitioner argues the equities weigh in his favor, the requested injunction would impose a significant burden on government agencies as it directly interferes with their discretionary powers under the removal statutes, especially in light of the national security concerns here. It is well settled that "the public interest in enforcement of the United States' immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (DC Cir. 1981); *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976). The government has a strong interest in detaining someone with national security inadmissibility findings. The timing of the re-detention does not diminish the significance of this finding, nor the government's interest in detention. It would not be equitable to the government nor serve public interest for this Court to seize control over the removal authority and decisions that Congress expressly commended to the Secretary's discretion in 8 U.S.C. § 1226.

CONCLUSION

For the reasons stated herein, the Court should dismiss the Habeas Petition and Deny the TRO Application.

Dated: November 3, 2025

Respectfully submitted,

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