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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 ELADIO CORTEZ MORALES,

13 Petitioner

14 v.

15 SERGIO ALBARRAN, et al.,

16 Respondents

) No. 25-cv-09241-HSG

)

) **RESPONDENTS' RESPONSE TO MOTION**
) **FOR PRELIMINARY INJUNCTION**

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1 **I. INTRODUCTION**

2 Petitioner Eladio Cortez Morales is an individual with a serious criminal history and a final order
3 of removal who was released from immigration detention in 2023 on an *Aleman Gonzalez* bond granted
4 by an immigration judge and has been out of custody since then. Petitioner's immigration judge-issued
5 bond means that he cannot be re-detained by Immigration and Customs Enforcement ("ICE") absent
6 changed circumstances, and ICE is not presently aware of any changed circumstances in his case that
7 would allow it to revoke the bond. As part of his release, he is subject to an Order of Supervision under
8 ICE's Intensive Supervision Appearance Program, which entails regular check-ins with case specialists.
9 Petitioner was not detained at his last check-in, and ICE has affirmed that he would not have been
10 detained even in the absence of a court order prohibiting detention. There is no indication that re-
11 detention is imminent, likely, or even possible in the present circumstances. Yet Petitioner nevertheless
12 asks this Court to grant the extraordinary relief of a preliminary injunction to prevent his hypothetical
13 and entirely speculative *future* custody. He seeks this prospective injunction based not on any concrete
14 or imminent threat of re-arrest, but rather based entirely on his conjectural fears—contradicted by the
15 evidence in this case—that Respondents may re-arrest him at some unspecified point in the future, such
16 as at one of his check-in appointments. Despite Petitioner's fears, Respondents have neither arrested nor
17 intended to arrest Petitioner at any of his prior check-in appointments, and they will not revoke his bond
18 absent changed circumstances.

19 Under these circumstances, Petitioner's motion should be dismissed for lack of jurisdiction.
20 Petitioner lacks Article III standing because he has failed to allege any concrete, imminent injury.
21 Moreover, this Court should not exercise habeas jurisdiction because Petitioner is not challenging his
22 present custodial arrangement, but rather his hypothetical future detention—which is not on the horizon,
23 and which may well never occur.

24 In the alternative, Petitioner's motion should be denied because he does not meet the heavy
25 burden required to obtain preliminary injunctive relief. He has not shown a likelihood of prevailing on
26 the merits because the circumstances of any future detention, if it does occur, are not known, and
27 accordingly there can be no determination at this juncture that any future detention would be unlawful.
28 Petitioner seeks essentially an advisory opinion that he would be entitled to prior notice and a judicial

1 hearing under *any* changed circumstances in which he might be arrested or re-detained in the future—
2 even due to serious criminal activity or to effect removal in the event of an executable final order of
3 removal. Nor has he shown that immediate and irreparable harm is *likely*, as he must. Indeed, if he
4 prevails in his claim for collateral relief from U.S. Citizenship and Immigration Services (“USCIS”), he
5 may never be detained again. Accordingly, Petitioner fails to meet his burden, and his motion for a
6 preliminary injunction should be denied.

7 **II. BACKGROUND**

8 **A. Petitioner’s Unlawful Entry and Subsequent Criminal History.**

9 Petitioner is a native and citizen of Mexico. Declaration of Jesse Cruz (“Cruz Decl”) ¶ 7. He
10 unlawfully entered the United States without having been admitted or paroled after inspection by an
11 immigration officer in 2004. *Id.* Three years later, he was convicted of a serious crime—two counts of
12 assault with a deadly weapon, with enhancements, and was sentenced to over 22 years in prison. *Id.* ¶ 8
13 & Exs. 1, 6, 8. According to Petitioner, on September 25, 2025, his criminal conviction was vacated.
14 He was recharged in juvenile court and admitted the charges. Dkt. No. 1 ¶ 28.

15 **B. Petitioner’s Immigration Proceedings.**

16 In 2008, the Department of Homeland Security (“DHS”) issued a final administrative order of
17 removal on the basis of his aggravated felony conviction for a crime of violence. *Id.* ¶ 9 & Ex. 7. Upon
18 his release from state prison in 2022, ICE detained him pursuant to 8 U.S.C. § 1231(a)(2), which
19 provides for a mandatory 90-day period of detention following a final administrative order of removal.
20 *Id.* ¶ 10; *see Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). After the 90-day removal period,
21 Petitioner’s detention authority switched to 8 U.S.C. § 1231(a)(6), which allows for detention of
22 individuals subject to a final administrative order of removal beyond the removal period. *Arteaga-*
23 *Martinez*, 596 U.S. at 579.

24 Petitioner claimed a fear of return to Mexico, however, and following a reasonable fear interview
25 with USCIS, he was referred to an immigration judge for withholding-only proceedings. Cruz Decl.
26 ¶ 11 & Ex. 2. On April 4, 2023, he had a custody redetermination hearing before an immigration judge
27 pursuant to *Aleman Gonzalez*, at which the government bore the burden of establishing by clear and
28 convincing evidence that he was a flight risk or danger. Cruz Decl. ¶ 12 & Ex. 3; *see Aleman Gonzalez*

1 *v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543
2 (2022).¹ The immigration judge ordered Petitioner released from custody under a \$5,000 bond and
3 alternative to detention (“ATD”) conditions. Cruz Decl. ¶ 12 & Ex. 3. ICE placed Petitioner into the
4 ATD program, and he was issued an order of supervision with reporting requirements. *Id.* ¶ 13 & Ex. 4.

5 Because Petitioner has been released on an immigration judge-issued bond, he cannot be re-
6 detained absent changed circumstances. See *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981);
7 *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021). ICE has confirmed that it continues to
8 adhere to the *Matter of Sugay* “changed circumstances” standard and that this principle specifically
9 limits its ability to revoke Petitioner’s immigration bond. Cruz. Decl. ¶ 18.

10 In August 2024, pursuant to Petitioner’s request, the immigration court administratively closed
11 Petitioner’s withholding-only proceedings so that he could seek collateral relief with USCIS. *Id.* ¶¶ 14-
12 15. He has a pending application with USCIS for a U Visa. Dkt. No. 1 ¶ 25.

13 **C. Petitioner’s October 28, 2025 Check-in and Habeas Petition.**

14 ICE’s primary ATD program is the Intensive Supervision Appearance Program (“ISAP”), which
15 is the program for monitoring non-detained individuals as they move through immigration proceedings
16 or prepare for departure. Cruz Decl. ¶ 5. ISAP daily operations are managed by contract case
17 specialists, not ICE Enforcement and Removal Operations (“ERO”) officers. These ISAP case
18 specialists monitor ISAP participants, including Petitioner, and report compliance issues to ICE. Cruz
19 Decl. ¶ 5. ISAP case specialists do not conduct enforcement actions, such as arresting or detaining
20 individuals, nor do they make decision as to what enforcement actions should be taken. *Id.*

21 As part of his regular ATD reporting requirements, Petitioner is required to report to ISAP every
22 8 weeks, alternating between virtual and in-person reporting. *Id.* ¶ 16. On October 28, 2025, as part of
23 his regular ISAP reporting requirements, Petitioner was scheduled for a check-in appointment with ISAP
24 at 3:00 p.m. *Id.* On the day before the check-in, Petitioner’s counsel reached out to Respondent’s
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28 ¹ *Aleman Gonzalez* required individualized bond hearings before an immigration judge at which
the government bears the burden of establishing that the noncitizen is a flight risk or will be a danger to
the community for all noncitizens facing prolonged detention under Section 1231(a)(6). The Supreme
Court has since clarified that such periodic bond hearings are not statutorily required, *Johnson v.*
Arteaga-Martinez, 596 U.S. 573, 581 (2022), but the injunction in *Aleman Gonzalez* remains in place.

1 counsel, seeking an assurance that ERO did not intend to detain Petitioner at the check-in. ICE did not
2 in fact have any intention to re-detain Petitioner or take any enforcement action against him at that ISAP
3 check-in. Cruz Decl. ¶ 17. However, due to the abbreviated timeframe, Petitioner's counsel was unable
4 to provide information, one way or the other, about what might happen at this appointment. This is
5 often the case, and does not reflect that detention is likely. The sheer number of individuals subject to
6 ISAP means that cases are often not reviewed and decisions not made prior to each in-person check-in.
7 *Id.* ¶ 19. ISAP has approximately 21,000 individuals enrolled within the ERO San Francisco area of
8 responsibility, with about 3,500, including Petitioner, enrolled in ISAP in the San Francisco-San Jose
9 sub-office. *Id.* ¶ 5. Even apart from the numbers, enforcement decisions may be informed by the
10 information provided at the check-in, and ERO may consider a number of factors that may be unknown
11 prior to the meeting. Finally, there may be safety, security, and operational considerations that may
12 counsel against providing this sort of information. For all of those reasons, even when ERO has no
13 intention of detaining an individual, it may not be able to provide an assurance of non-detention in
14 advance of a check-in, especially with limited lead time. *Id.* ¶ 19.

15 The day before the scheduled check-in, having not received an assurance of non-detention and
16 concerned that ERO may detain him the next day, Petitioner filed the present habeas petition. He filed a
17 motion for temporary restraining early the next morning. Dkt. No. 3. The Court ordered a response by
18 11:15 a.m. on October 28, 2025. Dkt. No. 6. Shortly before the scheduled time for the check-in, the
19 Court granted the TRO, enjoining Respondents from re-detaining Petitioner without notice and a
20 hearing. Dkt. No. 9.

21 Petitioner attended his check-in and was not detained. ICE has affirmed that it would not have
22 detained Petitioner at his check-in, whether or not the TRO had issued. Cruz Decl. ¶ 17. Petitioner is
23 scheduled for his next check-in at the end of December, and according to his regular schedule, his
24 subsequent check-in will likely be scheduled eight weeks later. Cruz. Decl. ¶ 16. As noted, ISAP
25 check-ins are handled by contract case specialists, who do not make enforcement decisions. *Id.* ¶ 5.
26 Petitioner does not have any scheduled appointments to report to ERO. *Id.* Moreover, ICE cannot re-
27 detain Petitioner absent changed circumstances, and ICE is not presently aware of any changed
28 circumstances in Petitioner's case. Cruz Decl. ¶ 18.

1 III. ARGUMENT

2 A. Legal Standard

3 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted
4 unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068,
5 1072 (9th Cir. 2012). The moving party must show that “he is likely to succeed on the merits, that he is
6 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
7 favor, and that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

8 The purpose of a preliminary injunction is to preserve the status quo pending final judgment
9 rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software,*
10 *Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take two forms.” *Marlyn*
11 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). “A prohibitory
12 injunction prohibits a party from taking action and ‘preserves the status quo pending a determination of
13 the action on the merits.’” *Id.* (internal quotation omitted). “A mandatory injunction orders a
14 responsible party to take action,” as Petitioners seek here. *Id.* at 879 (internal quotation omitted). “A
15 mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is
16 particularly disfavored.” *Id.* “In general, mandatory injunctions are not granted unless extreme or very
17 serious damage will result and are not issued in doubtful cases.” *Id.* Where plaintiffs seek a mandatory
18 injunction, “courts should be extremely cautious.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th
19 Cir. 1994) (internal quotation omitted). The moving party “must establish that the law and facts *clearly*
20 *favor* [their] position, not simply that [they are] likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d
21 733, 740 (9th Cir. 2015) (emphasis original).

22 IV. ARGUMENT

23 A. Petitioner Lacks Standing For Prospective Injunctive Relief.

24 Petitioner must establish Article III standing to seek prospective injunctive relief. *See Clapper v.*
25 *Amnesty Int’l USA*, 568 U.S. 398, 412 (2013). That means he must show a future injury that is
26 “imminent, not conjectural or hypothetical.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).
27 Petitioner cannot make that showing.

28 Petitioner has failed to allege an imminent future injury because the event giving rise to his

1 petition has passed, and he cannot show that detention is likely in the future. Petitioner filed his petition
2 on October 27, 2025, alleging that he believed he was likely to be taken into custody at his check-in
3 appointment the next day. Dkt. No. 1 ¶ 4; Dkt. No. 3 at 7, 13 (“Respondents are likely to arrest Mr.
4 Cortez Morales at his ISAP check-in on October 28, 2025 at 3 pm”). But Petitioner was not detained or
5 arrested at that appointment, and ICE would not have detained him whether or not a temporary
6 restraining order (“TRO”) was in place. Cruz Decl. ¶ 17. Petitioner does not make any alternative
7 argument of certain and imminent harm in his moving papers. Moreover, while Petitioner will continue
8 to be required to report regularly to ISAP, he does not have any scheduled appointments to report to
9 ERO in San Jose, *id.* ¶ 18, and according to Petitioner, he is only “required to attend in-person check ins
10 at the ISAP San Jose office about once every six months.” *See* Dkt. No. 1-1 ¶ 20. And significantly,
11 ICE has confirmed that consistent with current case law and policy, it will not revoke Petitioner’s bond
12 “unless there are changed circumstances.” Cruz Decl. ¶ 18. Petitioner himself argues that “[t]here has
13 been no such change in circumstances that would justify ICE’s redetention” of him, Dkt. No. 3 at 14,
14 and ICE agrees that it is not presently aware of changed circumstances. Cruz Decl. ¶ 18. In light of the
15 facts that Petitioner himself has presented, therefore, he cannot establish that any future injury is
16 imminent and reasonably certain. *See J.P. v. Santacruz*, No. 25-cv-01640, 2025 WL 2998305, at *4
17 (C.D. Cal. Oct. 24, 2025) (dismissing petitioner’s challenge to “his future detention and/or arrest at
18 another physical appointment” because petitioner “fails to present sufficient allegations or evidence of
19 the threat of future injury to confer Article III standing”). Because the “alleged threat of future injury is
20 too speculative and unripe,” *J.P.*, 2025 WL 2998305, at *4, Petitioner does not have standing to bring
21 this habeas petition.

22 **B. Habeas Relief Is Both Inappropriate and Premature Because Petitioner Is**
23 **Challenging His Hypothetical Future Detention.**

24 Habeas relief is an appropriate request when an individual is detained and requesting release
25 from that detention. U.S. CONST. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) (“The writ of habeas corpus
26 shall not extend to a prisoner unless [h]e is in custody ”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591
27 U.S. 103, 117–18 (2020) (“[T]he essence of habeas corpus is an attack by a person in custody upon the
28 legality of that custody, and [] the traditional function of the writ is to secure release from illegal

1 custody.”). An individual does not need to be in actual physical custody to seek habeas relief; the “in
2 custody” requirement may be satisfied where an individual’s release from detention is subject to specific
3 conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993)
4 (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted
5 “custody” for habeas purposes).

6 Here, Petitioner alleges that he meets the “in custody” requirement because he was released on
7 bond and is subject to certain conditions of release. Dkt. No. 1 ¶ 7. But this habeas petition does not
8 purport to challenge that custodial arrangement or secure his release from any present “custody.”
9 Petitioner is not in physical custody and is not challenging his bond or whatever restraints ICE has
10 currently imposed. Rather, Petitioner seeks an injunction to prevent his hypothetical future arrest and the
11 possibility of future detention. The habeas relief that he seeks is not connected to the immigration
12 custody on which he bases his petition. Thus, Petitioner does not seek a remedy that sounds in habeas.
13 *See J.P. v. Santacruz, et al.*, No. 25-cv-1640, 2025 WL 2633198 (C.D. Cal. Aug. 27, 2025). In *J.P.*, the
14 court held that even assuming that ICE’s order of supervision satisfied the “in custody” requirement,
15 “Petitioner fails to adequately demonstrate he is challenging his confinement.” The court specifically
16 noted that challenges to *future* detention did not fall within habeas jurisdiction:

17 Here, Petitioner does not challenge the lawfulness of his alleged custody. . . . Rather, Petitioner
18 challenges his *potential* confinement absent a pre-deprivation hearing before a neutral
19 adjudicator. . . . Petitioner’s concern about re-detention stems from Respondents indication that
20 they *may possibly* re-detain Petitioner at a future in-person appointment that the ISAP scheduled.
. . . Based on the record in this case, the court would not find that Petitioner adequately
demonstrates a challenge to his custody.

21 Petitioner’s claim here similarly challenges his hypothetical future confinement, not his present
22 “custody,” and therefore habeas jurisdiction is inappropriate.

23 C. Petitioner Is Not Entitled To Protection From Any Hypothetical Future Arrest

24 Even if Petitioner had standing to challenge his hypothetical future detention, he has not
25 established that he is entitled to habeas relief—much less preliminary injunctive relief—because the
26 circumstances of any hypothetical future detention are presently unknown and unknowable. There can
27 be no determination at this juncture, therefore, that any future detention would be unlawful.

28 In issuing a TRO preventing Petitioner’s detention in advance of the October 28, 2025 check-in,

1 the Court reasoned that Respondents declined “to state unequivocally that Petitioner-Plaintiff will not be
2 detained today” and that “it is far from clear whether [the ‘changed circumstances’ standard] remains in
3 place.” Dkt. No. 9. But the current posture of the case is significantly different from the circumstances
4 that the Court considered when the petition was filed, and there is no justification to extend the TRO
5 into a preliminary injunction.

6 First, Petitioner does not face an imminent in-person check-in at which he will likely face
7 detention. The petition and TRO motion were filed in advance of the October 28, 2025 check-in. That
8 event has now passed. Respondents confirmed that they would not have detained Petitioner at that
9 check-in even if the TRO had not been in place.² Cruz Decl. ¶ 17. Petitioner has not identified any
10 future in-person check-in where he believes he will likely be detained. *Cf. J.P.*, 2025 WL 2998305, at
11 *4 (dismissing habeas petition where “the event giving rise to the Petition has passed”).³

12 Second, Respondents have confirmed not only that they continue to adhere to the changed
13 circumstances principle as set forth in *Matter of Sugay*, but indeed that they are unaware of any changed
14 circumstances in this case, and thus there is no current threat of bond revocation and re-detention, even
15 if another check-in were on the calendar. Cruz Decl. ¶ 18. Thus, Respondents and Petitioner are in
16 agreement: re-detention is not presently permitted because Petitioner has been released on an
17 immigration judge-issued bond and the record does not reflect changed circumstances. In *Panosyan v.*
18 *Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021), a Ninth Circuit panel recognized that release of a
19 petitioner on an immigration bond provided sufficient assurances that the Government would not re-
20 detain the petitioner, such that the pending habeas petition was moot. While Petitioner notes that “ICE
21

22 ² That Respondents were unable to respond to Petitioner’s request for an assurance of non-
23 detention in advance of the check-in due did not mean that they intended to detain him; as described
24 above, for a number of reasons ERO may not be able to respond to these inquiries, especially when they
25 are made so close in time to the check-in date. Cruz Decl. ¶ 19.

26 ³ Petitioner’s concern about a possible arrest at his check-in grew entirely out of his conjectural
27 fears, not any actual evidence or suggestion that arrest was likely. *Cf. J.P.*, 2025 WL 2998305, at *2
28 (petitioner was called in for an unscheduled in-person ISAP meeting a week after he had an encounter
with police and was booked into jail); *Guillermo M. R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL
1983677, at *3 (N.D. Cal. July 17, 2025) (habeas petition filed after petitioner was instructed to go in for
a “case review” with ICE, where he was advised that he would be detained). Unlike the petitioners in
those cases, Petitioner filed his petition in advance of an appointment that had been on the books for
months. He was not specially “called in” for an appointment, was unaware of any precipitating event
that would cause ICE to revoke his bond, and had not been told that he would be detained.

1 is currently detaining large numbers of immigrants at their ICE or ISAP check-ins,” Dkt. No. 3 at 6,
2 Petitioner has not identified any other similarly situated individuals—those released on an immigration
3 judge-issued bond, without any changed circumstances—who have been detained at routine, regularly
4 scheduled check-in appointments.

5 Third, given that the circumstances of any future detention are unknown, it is both premature and
6 inappropriate for the Court to issue a preliminary injunction on the present record to prohibit *any* future
7 detention without notice and a hearing. The preliminary injunction that Petitioner seeks would preclude
8 Respondents from re-detaining Petitioner *even* if a material change in circumstances warranted
9 revocation of Petitioner’s bond. But Petitioner is not be entitled to an order requiring notice and a
10 hearing before all conceivable re-detention scenarios; there are a number of changed circumstances that
11 even Petitioner would concede could justify revocation of Petitioner’s bond and his re-detention, such as
12 an executable final order of removal, a serious violation of reporting requirements, or “reinvolvement
13 with the criminal justice system.” *Panosyan*, 854 F. App’x at 788. In these circumstances, “[t]he law
14 does not require a hearing before arrest.” *United States v. Cisneros*, No. 19-cr-00280-RS, 2021 WL
15 5908407, at *4 (N.D. Cal. Dec. 14, 2021) (upholding re-detention of non-citizen without notice
16 following his release on an immigration bond following his arrest for a gang-related assault). Indeed,
17 advance notice could compromise officer safety or operational effectiveness. *See Cruz Decl.* ¶ 19. And
18 in none of the statutory provisions that provide for immigration detention—a statutory framework that
19 the Supreme Court has long upheld as constitutional—has Congress imposed the requirement of a pre-
20 deprivation bond hearing. The Supreme Court has specifically held that the detention authority that is
21 applicable to Petitioner—8 U.S.C. § 1231(a)(6)—does not require an initial bond hearing, much less the
22 pre-detention hearing that Petitioner is asking this Court to impose. *See Arteaga-Martinez*, 596 U.S. at
23 581; *see also Zadvydas v. Davis*, 533 U.S. 678 (2001). Even where removal is not reasonably
24 foreseeable, the Supreme Court in *Zadvydas* recognized that release should be subject to appropriate
25 conditions of release, “and the alien may no doubt be returned to custody upon a violation of those
26 conditions.” *Id.* at 700. Nothing in the *Zadvydas* Court’s decision suggests that an individual would be
27 entitled to a pre-detention hearing before his § 1231(a)(6) detention could be resumed—indeed the
28 Court’s “no doubt” language signals just the opposite. The requested relief asks this Court to create what

1 Congress has specifically declined to require: a pre-detention bond hearing for § 1231(a)(6) detainees.

2 Petitioner argues Respondents' authority to arrest him is "also constrained by the demands of
3 due process," Dkt. No. 3 at 14, but the due process analysis varies depending on the facts and
4 circumstances leading to any decision to re-arrest. *See Zadvydas*, 533 U.S. at 693 (the "nature of the
5 [due process clause] protection may vary depending upon status and circumstance"). What Petitioner is
6 asking this Court to impose—a prophylactic, all-purpose due process order that would engraft an extra-
7 statutory pre-detention hearing onto § 1231(a)(6) without any indication of the particular status and
8 circumstances present at the time of proposed arrest—would turn the due process analysis on its head. It
9 would be tantamount to a ruling that the detention of an individual without a pre-deprivation hearing is
10 *never* permitted, regardless of the circumstances—a conclusion that is directly at odds with the statutory
11 mandate, Supreme Court precedent, and the due process framework. Nor should this Court be asked to
12 provide an advisory opinion on what changed circumstances might warrant arrest, especially where both
13 parties agree that there are no such changed circumstances present here. Whether notice and a hearing
14 are appropriate or even feasible may depend on the specific circumstances of each case, such as the
15 immigration status of the petitioner, the nature of the changed circumstances, and whether the petitioner
16 would be likely to flee were he given notice of ICE's intention to seek re-detention. The Court cannot
17 determine that the Constitution requires additional process where the facts underlying the future
18 detention scenario are unknown

19 **D. Petitioner Has Not Shown That He Is "Likely" To Suffer Irreparable Harm.**

20 These circumstances certainly do not provide the basis for the extraordinary remedy of a
21 preliminary injunction. Without any knowledge that his arrest is likely or imminent, Petitioner is
22 seeking an insurance policy from the Court to guarantee that he will not be detained. That is not the
23 purpose of a habeas petition, and it is not the purpose of a preliminary injunction. The Supreme Court
24 has cautioned that a court may not issue a preliminary injunction where the petitioner shows only a
25 "possibility" of irreparable harm. *Winter*, 555 U.S. at 21-22. Rather, the Supreme Court's "frequently
26 reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is
27 likely in the absence of an injunction." *Id.* at 22 (emphasis in original). This "key prerequisite for
28 equitable relief" requires Petitioner to show that it is likely he would suffer "substantial and immediate

1 irreparable injury.” *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1040 (9th Cir. 1999) (en banc)
2 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)) (emphasis added).

3 Here, Petitioner cannot come close to showing that it is “likely” he will suffer “immediate and
4 irreparable harm” absent an injunction. To the contrary, ICE has no present intention to re-detain
5 Petitioner, it is not aware of any changed circumstances that would authorize the revocation of his bond,
6 and Petitioner does not even have an imminent ICE check-in appointment. Cruz Decl. ¶¶ 16-18.
7 Petitioner also has a pending U Visa application. Dkt. No. 1 ¶ 3. If that is granted, he may never be re-
8 detained. Or, perhaps, if his U Visa application is denied and he has a final, executable order of
9 removal, he will voluntarily remove himself from the country and never be re-detained. On the present
10 record, it is entirely speculative to believe that Petitioner will be re-detained at all. And certainly there is
11 no basis to conclude that it is likely he will suffer “immediate” re-detention; indeed, absent some change
12 in circumstances, there is no reason to believe Petitioner will be re-arrested by immigration authorities at
13 all.

14 Thousands of aliens are subject to orders of supervision and are required to report to ICE on a
15 periodic basis as part of those orders--21,000 are enrolled with the ERO San Francisco Area of
16 Responsibility. Cruz Decl. ¶ 5. If each such non-citizen were entitled to bring a motion for emergency
17 relief to prevent ERO from undertaking hypothetical future actions, this would expand the Court’s
18 habeas jurisdiction into virtually unlimited territory, and impose unreasonable burdens on both the Court
19 and Respondents.

20 **E. The Balance of the Equities and Public Interest Favor Denying the Motion.**

21 The balance of the equities and public interest do not tip toward Petitioner simply because he has
22 alleged a due process violation. Even where constitutional rights are implicated, where a petitioner has
23 not shown a likelihood of success on the merits of a claim, or shown irreparable harm, a court should not
24 grant a preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Further,
25 where a moving party only raises “serious questions going to the merits,” the balance of hardships must
26 “tip sharply” in her favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011)
27 (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

28 The governmental interest in enforcing immigration laws is “of the highest order.” *Rodriguez*

1 *Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). Indeed, the government “suffers a form of
2 irreparable injury” “[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives
3 of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J.) (citation omitted). And the
4 government interest here—in preserving its ability to respond to changed circumstances as they arise,
5 and undertaking actions as necessary to enforce the law—is especially acute. Accordingly, the balance
6 of equities and the public interest favor denying Petitioner’s motion for preliminary injunction.

7 **F. Any Court Order Should Not Reverse the Burden of Proof.**

8 Should the Court order a bond hearing, Petitioner should have the burden of demonstrating that she
9 is not a flight risk or danger. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24
10 I & N Dec. 37, 40 (B.I.A. 2006) (“The burden is on the alien to show to the satisfaction of the Immigration
11 Judge that he or she merits release on bond.”). The Supreme Court has consistently affirmed the
12 constitutionality of detention pending removal proceedings, notwithstanding that the government has never
13 borne the burden to justify that detention by clear and convincing evidence. *See Demore v. Kim*, 538 U.S.
14 510, 531 (2003); *Reno v. Flores*, 507 U.S. 292, 305-09 (1993); *Carlson v. Landon*, 342 U.S. 524, 538
15 (1952); *Zadvydas*, 533 U.S. at 701. And in *Zadvydas*, the Court placed the burden on the noncitizen, not the
16 government, to show that his detention was unjustified. *Zadvydas*, 533 U.S. at 701 (noncitizen must first
17 “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably
18 foreseeable future,” only after which “the Government must respond with evidence sufficient to rebut that
19 showing”). It would be improper to reverse the burden of proof and place it on the government in these
20 circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210–12 (“Nothing in this record suggests that placing the
21 burden of proof on the government was constitutionally necessary to minimize the risk of error, much less
22 that such burden-shifting would be constitutionally necessary in all, most, or many cases.”).

23 Finally, while the Ninth Circuit previously held that the government bears the burden by clear and
24 convincing evidence that an alien is not a flight risk or danger to the community for bond hearings in certain
25 circumstances, *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (bond hearing after allegedly
26 prolonged detention), following intervening Supreme Court decisions, the Ninth Circuit has explained that
27 “*Singh’s* holding about the appropriate procedures for those bond hearings . . . was expressly premised on the
28 (now incorrect) assumption that these hearings were statutorily authorized.” *Rodriguez Diaz*, 53 F.4th at

1 1196, 1200–01 (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and *Johnson v. Arteaga-Martinez*, 596
2 U.S. 573 (2022)). Thus, prior Ninth Circuit decisions imposing such a requirement are “no longer good law”
3 on this issue, *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the
4 Supreme Court.

5 **V. CONCLUSION**

6 For the foregoing reasons, the government respectfully requests that the Court deny the motion for a
7 preliminary injunction.

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Respectfully submitted,

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