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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ENIL JABIB CLAROS, Petitioner, v. SERGIO ALBARRAN, et al., Respondents.	Case No. 3:25-cv-9473-EMC **RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** Hon. Edward M. Chen

I. INTRODUCTION

Petitioner Enil Jabib Claros is subject to a final order of removal from the United States because he unlawfully reentered the United States after being removed previously. His order of removal was most recently reinstated on July 7, 2019. Following the reinstatement of his prior removal order, Petitioner stated that he had a fear of returning to Honduras and requested a reasonable fear interview with an asylum officer. Petitioner was released while his reasonable fear interview request remained pending. On November 3, 2025, an asylum officer determined that Petitioner does not have a reasonable fear of persecution or torture in Honduras, and ICE subsequently detained him to effectuate his removal. The asylum officer's negative reasonable fear finding established a significant likelihood of the Petitioner's removal in the reasonably foreseeable future.

Petitioner brought this habeas petition and motion for temporary restraining order to prevent his detention without a bond hearing before the government effectuates his removal. However, Petitioner is subject to a final order of removal and an asylum officer determined that Petitioner does not have a reasonable fear of persecution or torture in Honduras. This confirms that the government is statutorily and constitutionally permitted to detain Petitioner to effectuate his removal, without providing a bond hearing, at least until his detention becomes impermissibly "prolonged." Because Petitioner was detained only yesterday, he cannot claim that his detention is prolonged.

Petitioner's constitutional claims are without merit. Congress has created a comprehensive scheme governing the detention of noncitizens pending removal, and the Department of Homeland Security has promulgated detailed regulations to implement that scheme, all of which the Supreme Court has consistently upheld. Granting Petitioner's requested relief would judicially graft on an additional layer of detention review that Congress, the Executive Branch, and the Supreme Court have never held is required in these circumstances. The Court should thus deny Petitioner's motion for a temporary restraining order.

II. FACTUAL BACKGROUND

A. Petitioner's Removal and Unlawful Reentry.

Petitioner is a native and citizen of Honduras. *See* Pet. ¶ 18. Petitioner received an order of removal and was removed to Honduras in 2011. *Id.* Petitioner illegally reentered the United States on

July 7, 2019. *Id.* He was detained by the Department of Homeland Security and requested a reasonable fear interview. *Id.* The Department of Homeland Security then released him from custody. *Id.*

B. Petitioner's Reasonable Fear Interview.

The asylum officer held Petitioner's reasonable fear interview on November 3, 2025. *See* Pet. ¶ 24. The asylum officer determined that Petitioner did not have a reasonable fear of return to Honduras. *See id* at ¶ 25. The Department of Homeland Security informed Petitioner that he could seek immigration judge review from ICE detention. *See id.* Petitioner filed this habeas petition on November 3, 2025, and this motion for a temporary restraining order on November 4, 2025.

III. LEGAL STANDARDS

A. Detention of Noncitizens Under 8 U.S.C. § 1231.

The detention of a noncitizen[1] 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 noncitizen for a 90-day "removal period," the commencement of which can be triggered by various events in the noncitizen's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter, the noncitizen "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).

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). Moreover, 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).

[1] This brief uses the term "noncitizen" as equivalent to the statutory term "alien." *See Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. § 1101(a)(3)).

B. Temporary Restraining Orders

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Such an injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioners seek here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Ibid.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Ibid.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Courts have also denied TRO motions where the relief the plaintiffs seek is the same relief sought on the merits, because "[j]udgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Mendez v. ICE*, No. 23-cv-00829-TLT, 2023 WL 2604585, at *3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

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.

IV. ARGUMENT

A. Petitioner's Due Process Claims Fail On The Merits.

Petitioner is subject to a reinstated order of removal; an asylum officer has determined he has no reasonable fear of return to Honduras; and an immigration judge will review that determination in a matter of days. Petitioner's detention is authorized by 8 U.S.C. § 1231, and he has no right to a bond hearing before being detained. Petitioner's substantive and procedural due process claims therefore fail on the merits.

1. Petitioner's redetention does not violate 8 U.S.C. § 1231.

Petitioner claims that his redetention outside the 90-day removal period violates 8 U.S.C. § 1231(a)(6). However, the plain language of 8 U.S.C. § 1231(a)(6) grants the Department of Homeland Security the discretion to detain Petitioner beyond the 90-day removal 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). Moreover, 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 the Department of Homeland Security may redetain an alien beyond the removal period in various circumstances, including, inter alia, if the purposes of release have been served. *See* 8 C.F.R. § 241.4(l).

That is what happened here. The Department of Homeland Security released Petitioner in July 2019 pending a reasonable fear interview. On November 3, 2025, Petitioner received that reasonable fear interview and an asylum officer determined that Petitioner did not establish a reasonable fear of

persecution or torture in Honduras. Thus, the purposes of Petitioner's release in July 2019 had been served. Moreover, the asylum officer's negative reasonable fear finding established a significant likelihood that Petitioner's removal will occur in the reasonably foreseeable future. His redetention was therefore authorized by statute and regulation. A finding to the contrary would lead to the absurd result that Congress failed to provide the Department of Homeland Security with the authority to redetain aliens whose removal is reasonably foreseeable. Congress plainly authorized detention in these circumstances. *See* 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.4(l).

2. Petitioner's detention would not violate substantive 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.*, *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022) (rejecting argument that § 1231(a)(6) "require[s] an initial bond hearing" "at the outset of detention"). 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, including to avoid the constitutional problems with "prolonged" detention, but even then, only when their removal in no longer reasonably foreseeable. *See Zadvydas*, 533 U.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 – he was only recently detained one day ago – or that his removal is not reasonably foreseeable at this time.

3. Procedural due process does not require an extra bond hearing.

Petitioner asserts that his procedural due process claim is governed by *Mathews v. Eldridge*, 424 U.S. 319 (1976). The government does not concede that *Mathews* applies here, given "the unique constitutional treatment of detained aliens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The Supreme Court has never held that *Mathews* applies in the immigration detention context. Nevertheless, if the Court were to apply *Mathews*, it would consider three factors: the plaintiff's private interest, the risk of erroneous deprivation without additional procedures, and the government's interest. These factors weigh against the additional process requested here.

(i) Petitioner's history and status reduce his liberty interest.

First, Petitioner's liberty interest is reduced by the fact that he is a noncitizen subject to a final order of removal. *See Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022) (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.

That is especially true in light of Petitioner's particular circumstances. Petitioner has unlawfully entered the country multiple times. He is subject to an administratively final order of removal. Although he can seek withholding of removal to the specific country of Honduras, he cannot challenge

the order of removal itself. *See Guzman Chavez*, 594 U.S. at 531, 535. An asylum officer has already determined that he does not have a reasonable fear of returning to Honduras and, if requested by Petitioner, this determination is subject to review, absent exceptional circumstances, by "the immigration judge within 10 days of the filing of the Form I-863, Notice of Referral to Immigration Judge." 8 C.F.R. § 1208.31(g). If Petitioner does not request immigration judge review or if the immigration judge affirms the asylum officer's negative reasonable fear finding, then Petitioner becomes immediately removable to Honduras. *See* 8 C.F.R. § 1208.31(g)(1). Even if the asylum officer's negative reasonable fear determination were overturned by the Immigration Judge on review and Petitioner's removal to Honduras eventually withheld, Petitioner remains removable to other countries. *See* 8 U.S.C. § 1231(b). All of these factors reduce Petitioner's liberty interest here. *See Rodriguez Diaz*, 53 F.4th at 1206-08.

Petitioner's conditional prior release in July 2019 does not heighten his liberty interest. Petitioner has never been granted any form of lawful status in the United States; his release was always subject to revocation so that the government could effectuate his removal. Plaintiff's conditional release does not somehow increase the strength of his liberty interest now, especially when his reasonable fear claim has been rejected by an asylum officer. *See Uc Encarnacion*, 2022 WL 9496434, at *3. This case is also fundamentally unlike cases like *Morrisey 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."). The government recognizes that any form of detention will implicate an individual's liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But those reasons do not change the fact that Petitioner's status and his history in immigration proceedings reduce his liberty interest here.

(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. And "existing agency procedures sufficiently protected [Petitioner's] liberty interest and mitigated the risk of erroneous deprivation." *Rodriguez Diaz*, 53 F.4th at 1209; *see also* 8 C.F.R. §§ 241.13(d)(1) & (j).

(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). 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").

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 extra-regulatory 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, pre-detention hearing he now requests.

B. Petitioner Fails to Show 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 temporary restraining order. Petitioner claims irreparable injury if he is not afforded a hearing before he is detained again. However,

Petitioner's speculative claimed injuries are "too tenuous" to support a temporary restraining order. *See Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Any claimed injuries regarding harm would arise from possible *detention*, not from the absence of a bond hearing. Petitioner's claimed injuries would not be prevented by a temporary restraining order that could still result in his re-detention following notice and a hearing.

Any injury from Petitioner's future potential detention is also insufficient because, as discussed above, it is well established that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also, e.g.*, *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And again, even if Petitioner were detained, he would have the opportunity to seek review of that detention if it extended more than six months without a significant likelihood of his removal within the reasonably foreseeable future. Petitioner therefore cannot show that any injury he might suffer from the specific absence of a *pre*-detention hearing is "irreparable."

Finally, 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"). Given his undisputed status as a noncitizen subject to a final order of removal whose detention has not been prolonged, Petitioner cannot establish that lawfully authorized detention would cause him irreparable harm.

C. Neither the Balance of Equities Nor Public Interest Favors Petitioner.

When the government is a party, the last two factors that Petitioner must establish to obtain a preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, for the same reasons that Petitioner has not shown the *Mathews* factors favor his requested additional process, Petitioner has not shown that a temporary restraining order barring his detention is in the public interest. To the contrary, the public interest lies squarely in detaining an individual subject to removal in the near term. *See Rodriguez Diaz*,

53 F.4th at 1208-09. "There is always a public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. at 436.

Indeed, Petitioner's motion ignores the public interest in application of immigration laws that the Supreme Court has long upheld. *See, e.g.*, *Demore*, 538 U.S. at 523; *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). Petitioner's claimed harm cannot outweigh the public interest in the 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). Recognizing the availability of a temporary restraining order under such circumstances would permit any noncitizen who had been released pursuant to an order of supervision pending removal to petition a federal district court for additional review, circumventing the comprehensive statutory scheme that Congress enacted.

And Petitioner's reliance on his assumed constitutional entitlement to an extra bond hearing does not save his argument. While it is "always in the public interest to protect constitutional rights," if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in upholding the existing processes and permitting Petitioner to be detained without additional burdensome processes, while allowing Petitioner to then challenge his detention if it becomes prolonged, is significant.

V. CONCLUSION

For the foregoing reasons, the Court should deny the request for a temporary restraining order.

Respectfully submitted,

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Dated: November 4, 2025

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