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9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10 EMAN ZAERI,
 11 Petitioner,
 12 v.
 13 KRISTI NOEM, et al.,
 14 Respondents.

Case No. 2:25-cv-02219-CDS-NJK
**Federal Respondents' Opposition to
 Motion for Temporary Restraining
 Order, ECF No. 11**

15
 16 The Federal Respondents hereby submit this Opposition to Petitioner Eman Zaeri's
 17 ("Petitioner" or "Zaeri") Emergency Motion for Temporary Restraining Order or
 18 Preliminary Injunction (ECF No. 11).

19 **I. Standard of Review**

20 A temporary restraining order or preliminary injunction is "an extraordinary
 21 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such
 22 relief." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). It is "never awarded as
 23 of right." *Id.* at 24. The moving party must establish: (1) a likelihood of success on the
 24 merits, (2) irreparable harm, (3) that the balance of equities tips in their favor, and (4) that
 25 an injunction serves the public interest. *Id.* at 20. When the nonmovant is the United States,
 26 the last two factors "merge." *Baird v. Bonta*, 81 F. 4th 1036, 1040 (9th Cir. 2023).

27 The Ninth Circuit employs a "sliding scale" approach to the four factors. *All. for*
 28 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v.*

1 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008). If the moving party raises “serious questions”
2 going to the merits, the balance of hardships must “tip sharply” in his favor to secure a
3 preliminary injunction. *Id.* Even under the sliding scale approach, the moving party must
4 still show a likelihood of irreparable harm and that the injunction is in the public interest.
5 *Id.* at 1125.

6 **II. Argument**

7 **A. Petitioner Failed to Demonstrate That He Is Entitled to Any Injunctive Relief**

8 Petitioner’s motion should be denied because he has not established that he is
9 entitled to a temporary restraining order or a preliminary injunction. To prevail on a
10 motion for a preliminary injunction, a plaintiff or petitioner must “establish that he is likely
11 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
12 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
13 the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken*
14 *v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs or petitioners must demonstrate a “substantial
15 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
16 When “a plaintiff has failed to show the likelihood of success on the merits, we need not
17 consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th
18 Cir. 2015).

19 The final two factors required for preliminary injunctive relief — balancing of the
20 harm to the opposing party and the public interest — merge when the United States is the
21 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
22 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
23 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
24 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. Of California v. Orrin W.*
25 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
26 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
27 seeking injunctive relief “must show either (1) a probability of success on the merits and the
28 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance

1 of hardships tips sharply in the moving party's favor.") (quoting *Andrieu v. Ashcroft*, 253
2 F.3d 477, 483 (9th Cir. 2001)).

3 **1. Petitioners Is Not Likely to Succeed on the Merits**

4 Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740.
5 Petitioners cannot establish that they are likely to succeed on the underlying merits for the
6 same reasons described in the Federal Respondents' Response to the Petition. The
7 arguments set forth therein are hereby incorporated by reference in their entirety.

8 **2. Petitioner Failed to Show an Irreparable Harm**

9 To prevail on their request for injunctive relief, Petitioner must demonstrate
10 "immediate threatened injury." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674
11 (9th Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d
12 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is
13 insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a
14 possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization
15 of injunctive relief as an extraordinary remedy that may only be awarded upon a clear
16 showing that the plaintiff is entitled to such relief." *Id.*

17 Petitioner has not shown that he will suffer irreparable harm in the absence of a
18 preliminary injunction. *See EEOC v. Astra USA, Inc.*, 94 F.3d 738, 743 (1st Cir. 1996).
19 "[I]rreparable harm is not assumed; it must be demonstrated." *Narragansett Indian Tribe v.*
20 *Guilbert*, 934 F.2d 4, 6 (1st Cir. 1991). Petitioner's generalized complaint of harm is that he
21 has been re-detained, that he could be suddenly transferred or removed to a third country
22 inherent in detention, removal proceedings. *See ECF No. 2*, at 13. Because the type of harm
23 Petitioner alleges "is essentially inherent in detention, the Court cannot weigh this strongly
24 in favor of" Petitioner. *Lopez Reyes v. Bonnar*, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24,
25 2018). Indeed, "if detention during removal proceedings constitutes irreparable harm in
26 and of itself, nearly all habeas petitioners would be entitled to injunctive relief." *Abi v. Barr*,
27 2019 WL 2463036, at *2 (D. Minn. 2019). Nor has Petitioner alleged any harm of a
28 constitutional dimension. Here, because Petitioners' alleged harm is essentially inherent in

1 detention, the Court cannot weigh this strongly in favor of” Petitioner. *Lopez Reyes v.*
2 *Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

3 **3. The Balance of Equities Does Not Tip in Petitioner’s Favor.**

4 The balance of equities and public interest weigh against granting a preliminary
5 injunction. It is well settled that the public and governmental interest in enforcement of the
6 United States’ immigration laws is extremely significant. *See, e.g., United States v. Martinez-*
7 *Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie’s House of Beef v. Castillo*, 659 F.2d 1211, 1221
8 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in
9 enforcement of the immigration laws is significant.”) (citing cases); *cf. Nken*, 556 U.S. at
10 436 (“There is always a public interest in prompt execution of removal orders: The
11 continued presence of an alien lawfully deemed removable undermines the streamlined
12 removal proceedings IIRIRA established, and permits and prolongs a continuing violation
13 of United States law.”) (internal quotation omitted); *Landon v. Plasencia*, 459 U.S. 21, 34
14 (1982) (“[I]t must weigh heavily in the balance that control over matters of immigration is a
15 sovereign prerogative, largely within the control of the executive and the legislature.”). As
16 the First Circuit has recognized, the “prompt execution of removal orders is a legitimate
17 governmental interest which detention may facilitate.” *Hernandez-Lara*, 10 F.4th at 32. This
18 strong governmental interest in ensuring appearance for removal proceedings and prompt
19 removal through mandatory detention pending removal proceedings thus outweighs the
20 Petitioner’s alleged hardships. Indeed, “[a]ny interference with . . . family integrity alleged
21 here was incidental to the government’s legitimate interest in effectuating detentions
22 pending the removal of persons illegally in the country.” *Aguilar*, 510 F.3d at 22. Thus,
23 even assuming Petitioner were likely to succeed on the merits of his claims (he is not), the
24 balance of the equities weighs heavily in favor of the government, and the Court should
25 decline to enter any injunction.

26 Moreover, “[u]ltimately the balance of the relative equities ‘may depend to a large
27 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
28 *Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec.

1 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above,
2 Petitioner cannot succeed on the merits of his claims as his detention is lawful and the
3 balancing of equities and the public interest weigh heavily against granting Petitioner's
4 requested equitable relief.

5 **III. Conclusion**

6 For the foregoing, the Federal Respondents request that the Court deny Petitioner's
7 Motion.

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9 Respectfully submitted,

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11
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