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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

I.E.,

Petitioner,

v.

JEREMY CASEY, Warden, Imperial
Regional Detention Facility, *et al.*,

Respondents.

Case No.: 25-cv-03227-DMS-DDL

**RESPONDENTS' RETURN TO
PETITION AND OPPOSITION TO
MOTION FOR INJUNCTIVE
RELIEF**

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1 **I. INTRODUCTION**

2 Petitioner requests that this Court order his immediate release from Immigration
3 and Customs Enforcement (ICE) custody or require that he be afforded a bond hearing.
4 As an arriving alien found to have a credible fear of persecution, however, Petitioner's
5 detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) while his removal proceedings
6 are ongoing. Accordingly, the Court should deny Petitioner's requests for interim
7 injunctive relief and dismiss the Petition.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**¹

9 Petitioner is a native and citizen of Uzbekistan. ECF No. 1 at 5.² On or about
10 January 27, 2025, Petitioner applied for admission at the port of entry in Calexico,
11 California. ECF No. 1-2 at 2. On March 10, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B),
12 Petitioner was interviewed by a DHS asylum officer to determine whether he had a
13 credible fear of persecution or torture if removed to Uzbekistan. *Id.* at 3. The interview
14 resulted in a positive determination. Ex. 1. The same day, Petitioner was issued a Notice
15 to Appear, charging him as an arriving alien inadmissible under 8 U.S.C.
16 §§ 1182(a)(7)(A)(i)(I) (an immigrant not in possession of a valid entry document).
17 Ex. 2.

18 On March 26, 2025, Petitioner appeared *pro se* at his first immigration court
19 master calendar hearing, which was reset to May 7, 2025, to allow him more time to
20 find an attorney. Ex. 3. On May 7, 2025, another master calendar hearing was held, at
21 which Petitioner's case was set for another calendar hearing the following month to
22 allow his counsel time to file his Form I-589 (Application of Asylum and Withholding
23 of Removal). ECF No. 1-2 at 3. Petitioner's counsel filed his Form I-589 on June 8,
24 2025. Ex. 4. Petitioner's case was scheduled for an in-person individual merits hearing
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26 ¹ The attached exhibits are true copies, with redactions of private information, of
27 documents obtained from ICE counsel.

28 ² Unless otherwise indicated, citations to pages of documents filed via the Court's
CM/ECF system refer to the automatically generated page number stamped at the top
of each ECF-filed document.

1 on August 25, 2025. Ex. 5. On July 16, 2025, the immigration court issued an order
2 moving up Petitioner’s individual hearing—now internet-based—to July 25, 2025.
3 Ex. 6. The same day, Petitioner’s counsel filed a motion to continue, seeking to reset
4 the individual hearing back to the original date of August 25, 2025, to provide sufficient
5 time to assemble Petitioner’s brief and evidence in support of his asylum claim. Ex. 7.
6 On July 24, 2025, the immigration court re-scheduled Petitioner’s case for an internet-
7 based hearing on August 12, 2025. Ex. 8. The same day, Petitioner’s counsel again filed
8 a motion to continue the hearing to August 25, 2025, or a date after August 18, 2025.
9 Ex. 9. On August 4, 2025, the immigration court issued an order granting Petitioner’s
10 motion to continue but did not immediately reset the hearing. Ex. 10. On August 10 and
11 11, 2025, Petitioner filed his brief and evidentiary submission in support of withholding
12 of removal. Ex. 11. On August 25, 2025, the immigration court issued an order resetting
13 Petitioner’s case for hearing on September 8, 2025. Ex. 12. On September 1, 2025,
14 Petitioner filed additional evidence in support of his application, along with a motion to
15 accept untimely filed documents, which the immigration court granted. Exs. 13, 14. The
16 individual hearing took place on September 8, 2025, and was continued to September
17 23, 2025, in order to complete the biometrics required for an immigration court to grant
18 relief. Ex. 14.

19 At the September 23 hearing, the immigration judge (IJ) found Petitioner to be
20 inadmissible under the Immigration and Nationality Act (INA) but granted Petitioner’s
21 application for asylum. Ex. 15. The IJ’s order reflects that DHS reserved its right to
22 appeal. *Id.* On October 23, 2025, DHS timely filed a Form EOIR-26, Notice of Appeal
23 from a Decision of an Immigration Judge, with the Board of Immigration Appeals.
24 Ex. 16; ECF No. 1 at 6. That appeal remains pending, and the IJ’s order has therefore
25 not become final. As of the filing date of the Petition, Petitioner’s counsel had entered
26 an appearance in the appeal but had not yet filed a response on the merits.

27 While his removal proceedings remain ongoing, Petitioner remains detained in
28 ICE custody under 8 U.S.C. § 1225(b)(1), as his detention is mandatory.

1 **III. STATUTORY BACKGROUND**

2 **A. Mandatory Detention Under 8 U.S.C. § 1225**

3 Section 1225 applies to an “applicant for admission,” defined as an “alien present
4 in the United States who has not been admitted” or “who arrives in the United States.”
5 8 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
6 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
7 583 U.S. 281, 287 (2018).

8 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
9 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
10 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
11 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
12 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
13 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
14 “If the officer determines at the time of the interview that [the] alien has a credible fear
15 of persecution . . . , the alien shall be detained for further consideration of the application
16 for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not
17 indicate an intent to apply for asylum, does not express a fear of persecution, or is
18 “found not to have such a fear,” they “shall be detained . . . until removed” from the
19 United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

20 **B. Review Before the Board of Immigration Appeals**

21 The BIA is an appellate body within the Executive Office for Immigration
22 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
23 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
24 adjudications under the [INA] that the Attorney General may by regulation assign to
25 it,” including IJ decisions in removal proceedings. 8 C.F.R. §§ 1003.1(d)(1) &
26 (b)(1), 236.1, 1236.1. The BIA not only resolves particular disputes before it, but is also
27 directed to, “through precedent decisions, [] provide clear and uniform guidance to
28 DHS, the immigration judges, and the general public on the proper interpretation and

1 administration of the [INA] and its implementing regulations.” 8 C.F.R. § 1003.1(d)(1).
2 Decisions rendered by the BIA are final, except for those reviewed by the Attorney
3 General. *Id.* § 1003.1(d)(7).

4 **IV. ARGUMENT**

5 **A. Petitioner’s Claims are Barred by 8 U.S.C. § 1252.**

6 Petitioner bears the burden of establishing that this Court has subject matter
7 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
8 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a
9 threshold matter, to the extent Petitioner is challenging the detention authority that he
10 is subjected to (8 U.S.C. § 1225(b)(1)), his claims are jurisdictionally barred by 8 U.S.C.
11 § 1252(g).

12 Courts lack jurisdiction over any claim or cause of action arising from any
13 decision to commence or adjudicate removal proceedings or execute removal orders.
14 *See* 8 U.S.C. § 1252(g) (“[N]o court shall have jurisdiction to hear any cause or claim
15 by or on behalf of any alien arising from the decision or action by the Attorney General
16 to *commence proceedings, adjudicate cases, or execute removal orders.*”) (emphasis
17 added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999)
18 (“There was good reason for Congress to focus special attention upon, and make special
19 provision for, judicial review of the Attorney General’s discrete acts of ‘commenc[ing]
20 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders’—which represent
21 the initiation or prosecution of various stages in the deportation process.”). In other
22 words, § 1252(g) removes district court jurisdiction over “three discrete actions that the
23 [AG] may take: [her] ‘decision or action’ to ‘commence proceedings, adjudicate cases,
24 or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner’s
25 claims necessarily arise “from the decision or action by the Attorney General to
26 commence proceedings [and] adjudicate cases,” over which Congress has explicitly
27 foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

28 Section 1252(g) also bars district courts from hearing challenges to the *method*

1 by which the government chooses to commence removal proceedings, including the
2 decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203
3 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
4 discretionary decisions to commence removal” and also to review “ICE’s decision to
5 take plaintiff] into custody to detain him during removal proceedings”).

6 Petitioner’s claims stem from his detention during removal proceedings.
7 However, that detention arises from the decision to commence such proceedings against
8 him. *See, e.g., Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL
9 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his
10 hearing before the Immigration Judge arose from this decision to commence
11 proceedings.”); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL
12 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–
13 99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of
14 jurisdiction to review action to execute removal order).

15 “For the purposes of § 1252, the Attorney General commences proceedings
16 against an alien when the alien is issued a Notice to Appear before an immigration
17 court.” *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833,
18 at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against
19 whom proceedings are commenced and detain that individual until the conclusion of
20 those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises
21 from the Attorney General’s decision to commence proceedings” and review of claims
22 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509
23 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).
24 Accordingly, the Court should dismiss Petitioner’s claims for lack of jurisdiction under
25 8 U.S.C. § 1252.

26 **B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

27 Alternatively, even if this Court determines that it has jurisdiction over
28 Petitioner’s claims, Petitioner has not established that he is entitled to preliminary

1 injunctive relief. He cannot show that he is likely to succeed on the underlying merits,
2 there is no showing of irreparable harm, and the equities do not weigh in his favor.

3 To prevail on a motion for a preliminary injunction, a plaintiff must “establish
4 that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in
5 the absence of preliminary relief, that the balance of equities tips in his favor, and that
6 an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
7 7, 20 (2008); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must
8 demonstrate a “substantial case for relief on the merits.” *Leiva-Perez v. Holder*, 640
9 F.3d 962, 967–68 (9th Cir. 2011).

10 When “a plaintiff has failed to show the likelihood of success on the merits, we
11 need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786
12 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary injunctive
13 relief—balancing of the harm to the opposing party and the public interest—merge
14 when the government is the opposing party. *See Nken*, 556 U.S. at 435. “Few interests
15 can be more compelling than a nation’s need to ensure its own security.” *Wayte v.*
16 *United States*, 470 U.S. 598, 611 (1985).

17 **1. Petitioner Is Unlikely to Succeed on the Merits.**

18 ***a. Petitioner’s Detention is Lawful and Mandatory.***

19 Petitioner challenges his detention on the basis that it has been prolonged in
20 violation of his Fifth Amendment due process rights. This request should be denied
21 because Petitioner’s detention is mandated by 8 U.S.C. § 1225(b)(1).

22 Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is defined as an “alien
23 present in the United States who has not been admitted or who arrives in the United
24 States.” As explained above, applicants for admission “fall into one of two categories,
25 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S.
26 at 287. Section 1225(b)(1)—the provision relevant here—applies because Petitioner is
27 an arriving alien. And that statute mandates detention when an immigration officer
28 determines that the alien has a credible fear of persecution. *See* 8 U.S.C.

1 § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that [the]
2 alien has a credible fear of persecution . . . , the alien shall be detained for further
3 consideration of the application for asylum.”) (emphasis added); *see also Matter of M-*
4 *S*, 27 I. & N. Dec. 509, 519 (AG 2019) (“all aliens transferred from expedited to full
5 [removal] proceedings after establishing a credible fear are ineligible for bond”).

6 In *Jennings*, 583 U.S. 281, 296-303 (2018), the Supreme Court evaluated the
7 proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that, “[r]ead most
8 naturally, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for
9 admission until certain proceedings have concluded.” *Id.* at 297. In other words, neither
10 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on the length of detention”
11 and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond
12 hearings.” *Id.* The Supreme Court added that the sole means of release for noncitizens
13 detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United
14 States is temporary parole at the discretion of the Attorney General under 8 U.S.C.
15 § 1182(d)(5). *Id.* at 300 (“That express exception to detention implies that there are no
16 other circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be
17 released.”) (emphasis in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate
18 detention of aliens throughout the completion of applicable proceedings[.]” *Id.* at 302.

19 Here, Petitioner claims that, despite the statutory prohibition on such relief, the
20 Fifth Amendment’s Due Process Clause requires that he be immediately released. ECF
21 No. 1 at 15. Petitioner’s due process claim, however, is foreclosed by the statutory
22 constraints discussed above.

23 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), a
24 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
25 detention without a hearing violated his constitutional rights. The Supreme Court
26 rejected the petition, concluding that the noncitizen’s continued detention did not
27 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
28 entry stands on a different footing: ‘Whatever the procedure authorized by Congress is,

1 it is due process as far as an alien denied entry is concerned.” *Id.* at 212 (citation
2 omitted).

3 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138-40
4 (2020), the Supreme Court once again addressed the due process rights of individuals
5 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
6 States. The Supreme Court stated that such individuals have no due process rights “other
7 than those afforded by statute.” *Id.* at 107; see also *id.* at 140 (“[A]n alien in
8 respondent’s position has only those rights regarding admission that Congress has
9 provided by statute.”). The Supreme Court noted that its determination was supported
10 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*
11 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544
12 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

13 Since the Supreme Court’s decision in *Thuraissigiam*, numerous published
14 decisions have acknowledged *Thuraissigiam*’s impact on the precise Fifth Amendment
15 Due Process Clause issue raised in this petition: Does an alien detained under 8 U.S.C.
16 § 1225(b)(1) have a due process right to release or a bond hearing after being detained
17 for a certain period of time? The answer is no. See *Rodriguez Figueroa v. Garland*, 535
18 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d
19 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y.
20 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); see also
21 *Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306, *2
22 (S.D. Cal. June 10, 2024) (“[T]he Court finds that Petitioner has no Fifth Amendment
23 right to a bond hearing pending his removal proceedings.”); *Zelaya-Gonzalez v.*
24 *Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811. *3 (S.D. Cal. Apr. 25,
25 2023) (same).

26 In short, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which
27 provides, absent discretionary parole, that when an alien has a credible fear of
28 persecution, “the alien shall be detained for further consideration of the application for

1 asylum.” As the statutory authority Petitioner is detained under does not afford him a
2 right to immediate release or a bond hearing before an immigration judge, the Court
3 should reject his claim that his detention violates the Fifth Amendment’s Due Process
4 Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*,
5 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.3

6 ***b. Petitioner’s Detention is Not Unconstitutionally Prolonged***

7 Petitioner requests that the Court apply the six-factor balancing test discussed in
8 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), to determine whether his
9 detention while in removal proceedings has been unconstitutionally prolonged. ECF
10 No. 1 at 9. While the Ninth Circuit has not yet ruled on the issue, Respondents submit
11 that the Court should instead apply the three-factor balancing test from *Lopez v.*
12 *Garland*, 631 F. Supp. 3d 870 (E.D. Cal. 2022). *See D.D. v. LaRose*, S.D. Cal. Case No.
13 25-cv-02581-BJC-JLB (slip op.), ECF No. 10 at 7. The *Lopez* three-factor test includes
14 an evaluation of (1) the total length of detention, (2) the likely duration of future
15 detention, and (3) delays in the removal proceedings caused by the petitioner and the
16 government. *Lopez*, 631 F.Supp.3d at 879.

17 First, Petitioner’s approximate 10-month detention does not favor granting
18 habeas relief. Courts in this district have found detention for much longer periods to be
19 unreasonably prolonged. *Durand v. Allen*, 23-cv-00279-RBM-BGS, 2024 WL 711607
20 at *5 (S.D. Cal. Feb. 21, 2024) (thirty-two months); *Sibomana v. LaRose*, No. 22-cv-
21 933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (nineteen months);
22 *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801 at *6
23 (S.D. Cal. Jan. 9, 2023) (three years); *Kydyrali*, 499 F. Supp. 3d at 773 (twenty seven
24 months). Petitioner’s relatively short detention does not compare to other cases granting
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26 ³ Petitioner’s suggestion that his continued detention violates his due process
27 rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001), is misplaced. ECF No. 1 at 7–9,
28 13. Both Section 1231 and *Zadvydas* plainly govern the detention of a noncitizen *subject*
to a final order of removal—which Petitioner is not. *See Zadvydas*, 533 U.S. at 682.
28 (“When an alien has been found to be unlawfully present in the United States and a final
order of removal has been entered . . .”).

1 habeas relief. *See, e.g., Yagao v. Figueroa*, No. 17-CV-2224-AJB-MDD, 2019 WL
2 1429582, at *1 (S.D. Cal. Mar. 29, 2019) (affording petitioner a bond hearing after 42
3 months of detention pending removal proceedings). Notably, “the length of detention
4 . . . is the most important factor.”, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019). At
5 this stage, the length of Petitioner’s detention is reasonable. *See D.D.*, S.D. Cal. Case
6 No. 25-cv-02581-BJC-JLB, ECF No. 10 at 8:22-24 (concluding that “Petitioner’s
7 continued *Banda v. McAleenan* detention, at this point, is not so unreasonable that it
8 requires a bond hearing to meet due process standards”).

9 Second, the likely duration of future detention weighs against Petitioner. There
10 is no reason to believe that once briefing is concluded, the BIA will not issue a decision
11 resolving Petitioner’s asylum application. *Id.* at 8:12-15 (“Although the outcome of this
12 hearing is yet to be determined, this fact does not support Petitioner’s claim that his
13 detention will continue for a significant time in the future. At this juncture, the Court
14 declines to engage in the speculation that Petitioner relies on in his argument on this
15 point.”).

16 Finally, although there have been one or two continuances granted in Petitioner’s
17 removal case, the record does not reflect any unreasonable delays by either party in
18 processing Petitioner’s case. *See D.D.*, S.D. Cal. Case No. 25-cv-02581-BJC-JLB, ECF
19 No. 10 at 8:16-18 (finding “the delay factor is neutral” even though the petitioner’s
20 hearings “were continued multiple times by the immigration judge”). Notably,
21 Petitioner arguably benefitted and utilized the continuances to amend his application
22 and submit additional evidence in support of his application. *See Ex. 13* (Petitioner
23 submitting additional untimely evidence after originally scheduled hearing date).

24 In short, even if the Court were to consider a balancing test, Petitioner’s detention
25 is not unconstitutional at this stage.

26 **2. Petitioner Has Not Shown Irreparable Harm**

27 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
28 “immediate threatened injury.” *Caribbean Marine Services Co., Inc. v. Baldrige*, 844

1 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v.*
2 *National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a
3 “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And
4 detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021
5 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff’d sub nom. Diaz Reyes v. Mayorkas*,
6 No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, “[i]ssuing a
7 preliminary injunction based only on a possibility of irreparable harm is inconsistent
8 with [the Supreme Court’s] characterization of injunctive relief as an extraordinary
9 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to
10 such relief.” *Winter*, 555 U.S. at 22.

11 Petitioner suggests that being subjected to detention itself constitutes irreparable
12 injury.⁴ But this argument “begs the constitutional questions presented in [his] petition
13 by assuming that [P]etitioner has suffered a constitutional injury.” *Cortez v. Nielsen*,
14 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner’s “loss of
15 liberty” is “common to all [noncitizens] seeking review of their custody or bond
16 determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7,
17 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in
18 immigration custody, and he has not shown extraordinary circumstances warranting a
19 mandatory preliminary injunction.

20 Importantly, the purpose of civil detention is facilitating removal, and DHS is
21 diligently pursuing Petitioner’s removal in accordance with the applicable statutes and
22 regulations. Here, because Petitioner’s alleged harm “is essentially inherent in
23 detention, the Court cannot weigh this strongly in favor of Petitioner.” *Lopez Reyes v.*
24 *Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

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

26 It is well settled that “the public interest in enforcement of the immigration laws
27

28 ⁴ Detention is different than removal. But a removal is also not an inherently
irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
2 1981) (collecting cases); *see Nken*, 556 U.S. at 436 (“There is always a public interest
3 in prompt execution of removal orders: The continued presence of an alien lawfully
4 deemed removable undermines the streamlined removal proceedings IIRIRA
5 established, and permits and prolongs a continuing violation of United States law.”)
6 (simplified). And ultimately, “the balance of the relative equities ‘may depend to a large
7 extent upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna*
8 *v. Kane*, Case No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz.
9 Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

10 Here, as explained above, Petitioner cannot succeed on the merits of his claims,
11 and the public interest in the prompt execution of removal orders is significant. The
12 balancing of equities and the public interest thus weigh heavily against granting
13 equitable relief in this case.

14 **V. CONCLUSION**

15 For the reasons stated above, the Court should deny Petitioner’s request for
16 injunctive relief and dismiss the Petition.

17
18 DATED: November 26, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

19
20 *s/ Betsey Boutelle*
21 BETSEY BOUTELLE
22 Assistant United States Attorney
23 Attorney for Respondents
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