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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 JUAN DE LA TORRE DURAN,
12 Petitioner,
13 v.
14 DOE 1, *et al.*,
15 Respondents.

Case No.: 3:25-cv-03230-DMS-DDL

**RESPONDENTS' RETURN IN
OPPOSITION TO PETITIONER'S
HABEAS PETITION AND
OPPOSITION TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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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 relief.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Petitioner is a native and citizen of Mexico. ECF No. 1 ¶ 16. On or about
9 December 13, 2024, Petitioner applied for admission at the port of entry in San Ysidro,
10 California. *Id.* at 19 (Ex. B). Petitioner did not then have any valid entry documents to
11 enter the United States. *Id.* Petitioner was determined to be inadmissible and placed in
12 expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). On December 26,
13 2024, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a
14 Department of Homeland Security (DHS) asylum officer to determine whether he had
15 a credible fear of persecution or torture if removed to Mexico. The interview resulted
16 in a positive determination. ECF No. 1 at 19 (Ex. B). On December 31, 2024, Petitioner
17 was issued a Notice to Appear (NTA), charging him as an arriving alien inadmissible
18 under 8 U.S.C. §§ 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid entry
19 document. *Id.* The filing of the NTA initiated removal proceedings against Petitioner,
20 and those proceedings remain ongoing.

21 Petitioner’s initial master calendar hearing was held on January 13, 2025. Ex. 1.
22 at 2. However, upon motions of Petitioner, the master calendar hearing was continued,
23 *inter alia*, to allow Petitioner an opportunity to vacate his state criminal convictions. *Id.*
24 On June 23, 2025, Petitioner filed a form I-589, application for asylum, withholding of
25 removal, and protection under the Convention Against Torture (CAT). Ex. 2. On August
26 15, 2025, Petitioner filed his first set of additional supplemental documents in support
27 of his I-589 application. Ex. 3. The immigration judge rejected the filing for failure to
28 comply with the Immigration Court Practice Manual. *Id.* Petitioner, on August 25, 2025,

1 refiled his first set of additional supplemental documents. Ex. 4. On September 6, 2025,
2 Petitioner filed his second set of additional supplemental documents, along with a
3 motion to accept untimely filed documents, which the immigration court granted. Ex.
4 5. Petitioner filed his third and final set of additional supplement documents on
5 September 19, 2025. Ex. 6.

6 An individual hearing was held on September 29, 2025. The immigration judge
7 found Petitioner to be inadmissible under the Immigration and Nationality Act (INA)
8 but granted Petitioner’s application for deferral of removal under CAT. ECF No. 1 at
9 224 (Ex. D). The immigration judge’s order reflects that DHS reserved its right to
10 appeal. *Id.* at 227. On October 23, 2025, DHS timely filed a Form EOIR-26, Notice of
11 Appeal from a Decision of an Immigration Judge, with the Board of Immigration
12 Appeals. *Id.* at 230-35 (Ex. E). That appeal remains pending, and the immigration
13 judge’s order has therefore not become final. Petitioner’s counsel has entered an
14 appearance in the appeal but has not yet filed a substantive response.

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

17 III. STATUTORY BACKGROUND

18 A. Mandatory Detention Under 8 U.S.C. § 1225

19 Section 1225 applies to an “applicant for admission,” defined as an “alien present
20 in the United States who has not been admitted” or “who arrives in the United States.”
21 8 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
22 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
23 583 U.S. 281, 287 (2018).

24 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
25 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
26 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
27 to expedited removal proceedings. See 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
28 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration

1 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
2 “If the officer determines at the time of the interview that [the] alien has a credible fear
3 of persecution . . . , the alien shall be detained for further consideration of the application
4 for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not
5 indicate an intent to apply for asylum, does not express a fear of persecution, or is
6 “found not to have such a fear,” they “shall be detained . . . until removed” from the
7 United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

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

9 The BIA is an appellate body within the Executive Office for Immigration
10 Review (EOIR) and possesses delegated authority from the Attorney General. 8 C.F.R.
11 §§ 1003.1(a)(1), (d)(1). The BIA is “charged with the review of those administrative
12 adjudications under the [INA] that the Attorney General may by regulation assign to
13 it,” including immigration judges’ decisions in removal proceedings. 8 C.F.R. §§
14 1003.1(d)(1), (b)(1), 236.1, 1236.1. The BIA not only resolves particular disputes
15 before it, but is also directed to, “through precedent decisions, [] provide clear and
16 uniform guidance to DHS, the immigration judges, and the general public on the proper
17 interpretation and administration of the [INA] and its implementing regulations.” *Id.* §
18 1003.1(d)(1). Decisions rendered by the BIA are final, except for those reviewed by the
19 Attorney General. 8 C.F.R. § 1003.1(d)(7).

20 **IV. ARGUMENT**

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

22 Petitioner bears the burden of establishing that this Court has subject matter
23 jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770,
24 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a
25 threshold matter, to the extent Petitioner is challenging the detention authority that he
26 his subjected to (8 U.S.C. § 1225(b)(1)), his claims are jurisdictionally barred by 8
27 U.S.C. § 1252(g).

28 Courts lack jurisdiction over any claim or cause of action arising from any

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

16 Section 1252(g) also bars district courts from hearing challenges to the *method*
17 by which the government chooses to commence removal proceedings, including the
18 decision to detain an alien pending removal. See *Alvarez v. ICE*, 818 F.3d 1194, 1203
19 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s
20 discretionary decisions to commence removal” and also to review “ICE’s decision to
21 take plaintiff] into custody to detain him during removal proceedings”).

22 Petitioner’s claims stem from his detention during removal proceedings.
23 However, that detention arises from the decision to commence such proceedings against
24 him. See, e.g., *Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL
25 4286979, at *4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his
26 hearing before the Immigration Judge arose from this decision to commence
27 proceedings.”); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL
28 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–

1 99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of
2 jurisdiction to review action to execute removal order).

3 “For the purposes of § 1252, the Attorney General commences proceedings
4 against an alien when the alien is issued a Notice to Appear before an immigration
5 court.” *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833,
6 at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against
7 whom proceedings are commenced and detain that individual until the conclusion of
8 those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this process arises
9 from the Attorney General’s decision to commence proceedings” and review of claims
10 arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509
11 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g).
12 Accordingly, the Court should dismiss Petitioner’s claims for lack of jurisdiction under
13 8 U.S.C. § 1252.

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

15 Petitioner has not established entitlement to interim injunctive relief. Petitioner
16 has failed to show a likelihood of success on the underlying merits, a showing of
17 irreparable harm, and that the equities tip in his favor. Thus, Petitioner’s motion should
18 be denied.

19 In general, the showing required for a temporary restraining order (“TRO”) is the
20 same as that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v.*
21 *John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion
22 for a TRO, a plaintiff must “establish that he is likely to succeed on the merits, that he
23 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
24 of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*
25 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418,
26 426 (2009). Petitioner must demonstrate a “substantial case for relief on the merits.”
27 *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When “a plaintiff has
28 failed to show the likelihood of success on the merits, we need not consider the

1 remaining three *Winter* elements.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.
2 2015) (citations omitted).

3 The final two factors required for preliminary injunctive relief—balancing of the
4 harm to the opposing party and the public interest—merge when the government is the
5 opposing party. *See Nken*, 556 U.S. at 435. Few interests, however, “can be more
6 compelling than a nation’s need to ensure its own security.” *Wayte v. United States*, 470
7 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79
8 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

9 The Ninth Circuit also has a “serious questions” test which dictates that “serious
10 questions going to the merits and a hardship balance that tips sharply toward the
11 petitioner can support issuance of an injunction, assuming the other two elements of the
12 Winter test are also met.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32
13 (9th Cir. 2011). Thus, under the serious questions test, a TRO can be granted if there is
14 a likelihood of irreparable injury to the petitioner, serious questions going to the merits,
15 the balance of hardships tips in favor of the petitioner, and the injunction is in the public
16 interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

17 **1. No Likelihood of Success 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. Here, because Petitioner is an arriving alien, § 1225(b)(1) applies. Under that
27 statute, where an immigration officer determines the alien has a credible fear of
28 persecution, the alien must be detained pending his or her asylum application. *See* 8

1 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that
2 [the] 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*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. §
7 1225(b). 583 U.S. at 296-303. The Supreme Court stated that, “[r]ead most naturally,
8 [8 U.S.C.] §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission
9 until certain proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C.
10 § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on the length of detention” and
11 “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.”
12 *Id.* The Supreme Court added that the sole means of release for noncitizens detained
13 pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is
14 temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5).
15 *Id.* at 300 (“That express exception to detention implies that there are no other
16 circumstances under which aliens detained under § 1225(b) may be released.”)
17 (emphasis in original). “In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens
18 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 ¶¶ 23-33. 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 310.¹

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

7 Petitioner’s detention, at this stage, is not unconstitutionally prolonged. To
8 determine whether detention is unreasonably prolonged, the Court should apply the
9 three-factor balancing test discussed in *Lopez v. Garland*, 631 F. Supp. 3d 870 (E.D.
10 Cal. 2022). *See D.D. v. LaRose*, S.D. Cal. Case No. 25-cv-02581-BJC-JLB (slip op.),
11 ECF No. 10 at 7. The *Lopez* three-factor test weighs (1) the total length of detention,
12 (2) the likely duration of future detention, and (3) delays in the removal proceedings
13 caused by the petitioner and the government. *Lopez*, 631 F.Supp.3d at 879.

14 First, Petitioner’s approximate 11-month detention does not favor granting
15 habeas relief. Courts in this district have found detention for much longer periods to be
16 unreasonably prolonged. *Durand v. Allen*, 23-cv-00279-RBM-BGS, 2024 WL 711607
17 at *5 (S.D. Cal. Feb. 21, 2024) (thirty-two months); *Sibomana v. LaRose*, No. 22-cv-
18 933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (nineteen months);
19 *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB, 2023 WL 139801 at *6
20 (S.D. Cal. Jan. 9, 2023) (three years); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D.
21 Cal. 2020) (twenty seven months). Petitioner’s relatively short detention does not
22 compare to other cases granting habeas relief. *See, e.g., Yagao v. Figueroa*, No. 17-CV-
23 2224-AJB-MDD, 2019 WL 1429582, at *1 (S.D. Cal. Mar. 29, 2019) (affording

24
25 ¹ Petitioner also argues that his continued detention violates his due process rights under
26 *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1 ¶¶ 23-33. However, 8 U.S.C. §
27 1231 and *Zadvydas* govern the detention of a noncitizen subject to a final order of
28 removal. *See Zadvydas*, 533 U.S. at 682. (“When an alien has been found to be
unlawfully present in the United States and a final order of removal has been entered .
.”). Because Petitioner is not subject to a final order of removal, § 1231 and *Zadvydas*
do not apply.

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

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

15 Finally, the record does not reflect any unreasonable delays in processing
16 Petitioner’s case on the part of the government. *See D.D.*, S.D. Cal. Case No. 25-cv-
17 02581-BJC-JLB, ECF No. 10 at 8:16-18 (finding “the delay factor is neutral” even
18 though the petitioner’s hearings “were continued multiple times by the immigration
19 judge”). To the contrary, Petitioner initiated multiple continuances to allow for
20 resolution of his post-conviction state case. Petitioner benefitted and utilized the
21 continuances to amend his application and submit additional evidence in support of his
22 application. Thus, the third factor weighs against Petitioner.

23 Accordingly, Petitioner’s detention is not unconstitutional at this stage.

24 ***c. Conditions of Confinement Allegations are Not Proper Habeas***
25 ***Claims***

26 To the extent Petitioner asserts claims regarding conditions of his confinement,
27 the Court lacks jurisdiction over such claims because they do not challenge the
28 lawfulness of his custody. An individual may seek habeas relief under 28 U.S.C. § 2241

1 if he is “in custody” under federal authority “in violation of the Constitution or laws or
2 treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to
3 challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th
4 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t*
5 *of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas
6 corpus historically “provide[s] a means of contesting the lawfulness of restraint and
7 securing release.”). The Ninth Circuit squarely explained how to decide whether a claim
8 sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads
9 us to conclude the relevant question is whether, based on the allegations in the petition,
10 release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072
11 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016)
12 (The key inquiry is whether success on the petitioner’s claim would “necessarily lead
13 to immediate or speedier release.”). Here, Petitioner’s claims regarding the conditions
14 of his confinement do not arise under § 2241. *See Nettles*, 830 F.3d at 933 (“We have
15 long held that prisoners may not challenge mere conditions of confinement in habeas
16 corpus.”); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3
17 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s
18 § 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or duration
19 of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-
20 1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding
21 petitioners’ claims did not arise under § 2241 because they were not arguing they were
22 unlawfully in custody and receiving the requested relief would not entitle them to
23 release).

24 2. Irreparable Harm Has Not Been Shown

25 To prevail on his request for interim injunctive relief, Petitioner must demonstrate
26 “immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d
27 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm’n v. National Football*
28 *League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of

1 irreparable harm is insufficient. *Winter*, 555 U.S. at 22. And detention alone is not an
2 irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D.
3 Wash. Feb. 19, 2021). Further, “[i]ssuing a preliminary injunction based only on a
4 possibility of irreparable harm is inconsistent with [the Supreme Court’s]
5 characterization of injunctive relief as an extraordinary remedy that may only be
6 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555
7 U.S. at 22.

8 Petitioner suggests that being subjected to allegedly unjustified detention itself
9 constitutes irreparable injury.² But this argument “begs the constitutional questions
10 presented in [his] petition by assuming that [P]etitioner has suffered a constitutional
11 injury.” *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal.
12 April 5, 2019). Moreover, Petitioner’s “loss of liberty” is “common to all aliens seeking
13 review of their custody or bond determinations.” *Resendiz v. Holder*, No. C 12–04850
14 WHA, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged
15 irreparable harm as any habeas corpus petitioner in immigration custody, and he has not
16 shown extraordinary circumstances warranting a temporary restraining order.

17 Importantly, the purpose of civil detention is facilitating removal, and the
18 government is working to timely remove Petitioner. Here, because Petitioner’s alleged
19 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor
20 of Petitioner.” *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 7474861, at *10
21 (N.D. Cal. Dec. 24, 2018).

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

23 It is well settled that “the public interest in enforcement of the immigration laws
24 is significant.” *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
25 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 (“There is always a public
26

27 ² Detention is different than removal. But a removal is also not an inherently irreparable
28 injury. *See Nken*, 556 U.S. at 435.

1 interest in prompt execution of removal orders: The continued presence of an alien
2 lawfully deemed removable undermines the streamlined removal proceedings [the
3 Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and
4 permits and prolongs a continuing violation of United States law.”) (simplified).
5 Moreover, “ultimately the balance of the relative equities ‘may depend to a large extent
6 upon the determination of the [movant’s] prospects of success.’” *Tiznado-Reyna v.*
7 *Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13,
8 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

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

13 **V. CONCLUSION**

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

16
17 DATED: December 2, 2025

18 Respectfully submitted,

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