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

10 Jesus Verdugo-Carrasco,
 11
 Petitioner,
 12 v.

Case No. 2:25-cv-02374-CDS-BNW

**Federal Respondents' Response to
 Petitioner's Motion for Temporary
 Restraining Order**

13 THE UNITED STATES OF AMERICA,
 KRISTI NOEM, in her Official Capacity,
 14 Secretary of the United States Department of
 Homeland Security; PAMELA BONDI, in
 15 her Official Capacity, Attorney General,
 Department of Justice; KERRI ANN
 16 QUIHUIS, in her Official Capacity, ICE
 Field Office Director, Detention and
 17 Removal, Las Vegas, Nevada (ICE Local);
 MICHAEL BERNACKE, in his Official
 18 Capacity, Field Office Director, Salt Lake
 City Field Office, U.S. Immigration and
 19 Customs Enforcement; TODD LYONS, in
 his Official Capacity, Acting Director,
 20 Immigration & Customs Enforcement;
 JOHN MATTOS, in his Official Capacity,
 21 Warden of Immigration Detention Facility,
 Nevada Southern Detention Center,

22 Respondents.
 23

24 Federal Respondents hereby file their Response to Petitioner Jesus Verdugo-
 25 Carrasco's Motion for Temporary Restraining Order.

26 **I. Factual Background**

27 On June 8, 2015, Petitioner Jesus Verdugo-Carrasco ("Petitioner") was arrested by
 28 ICE for entering the United States without being inspected, admitted or paroled by a

1 United States immigration officer. See I-213 Form from June 8, 2015, attached hereto as
2 Exhibit A. Petitioner was issued a Notice to Appear. See Notice to Appear from June 8,
3 2015, attached hereto as Exhibit B. On January 13, 2016, the Immigration Judge (“IJ”)
4 denied Petitioner’s request for release on bond concluding that he presented a risk of flight.
5 See Bond Memorandum of the Immigration Judge, attached hereto as Exhibit C. The basis
6 for the decision was that DHS received an arrest warrant from Interpol that related to
7 Petitioner which indicated that he was wanted in the Sinaloa Criminal Court to face
8 charges of homicide in Mexico. See Exhibit C. Petitioner applied for asylum and
9 withholding of removal and protection under the Convention Against Torture (“CAT”).
10 On February 26, 2016, the IJ denied Petitioner’s application for asylum and withholding of
11 removal and protection under CAT. Petitioner appealed the decision of the IJ to the Board
12 of Immigration Appeals (“BIA”). On August 23, 2016, the BIA issued its decision and
13 affirmed the IJ’s determination that Petitioner is ineligible for asylum because he did not
14 file his application for that relief within 1 year of his arrival in the U.S. See BIA decision
15 from August 23, 2016, attached hereto as Exhibit D. The BIA also affirmed the IJ’s
16 determination that Petitioner is ineligible for asylum and withholding of removal under
17 both the Act and the CAT because there were serious reasons for believing that Petitioner
18 had committed a serious nonpolitical crime prior to his arrival in the United States. See
19 Exhibit D. Additionally, the BIA affirmed the IJ’s determination that the crime the
20 Petitioner admitted he committed was serious which was an attempted hijacking of a truck
21 traveling on a road in Mexico and the BIA concluded there are serious reasons for
22 believing that Petitioner committed a serious nonpolitical crime outside the United States
23 prior to arriving in the United States and is therefore ineligible for asylum and withholding
24 of removal under both the Act and the CAT. See Exhibit D. With respect to Petitioner’s
25 application for deferral of removal under the CAT, the BIA found clear error in the IJ’s
26 adverse credibility finding and remanded proceedings to the IJ to reassess whether the
27 Petitioner met his burden of proof to establish eligibility for deferral of removal under the
28 CAT in light of their decision. See Exhibit D. On October 7, 2016, the IJ granted Petitioner

1 the application for deferral of removal under the CAT and indicated the following
2 conditions of the CAT deferral grant: 1) the order does not confer upon him a lawful
3 immigration status; 2) the order will not necessarily result in his release from custody; 3)
4 the order is effective only until termination; and 4) the order is subject to termination and
5 review if the IJ concludes at a subsequent hearing that it is not likely that he would be
6 tortured in Mexico. See Written Decision of the Immigration Judge from October 7, 2016,
7 attached hereto as Exhibit E. The IJ also ruled that Petitioner shall be removed from the
8 United States to any country which is willing to accept him, and he shall not be removed to
9 Mexico. See Exhibit E.

10 On November 5, 2025, a warrant of arrest was issued for Petitioner for entering the
11 United States without inspection by U.S. Immigration authorities and he was detained by
12 ICE. See I-213 Form and Warrant for Arrest of Alien from November 5, 2025, attached
13 hereto as Exhibit F. On November 17, 2025, Petitioner filed with the Ninth Circuit Court
14 of Appeals a Petition for Review which included a request for stay of removal. See Ninth
15 Circuit Court of Appeals Docketing Notice, attached hereto as Exhibit G.

16 For the reasons set forth in this Response, Federal Respondents' position is that
17 Petitioner's Motion for Temporary Restraining Order (TRO) should be denied, because he
18 is not likely to succeed on the merits that there have been no due process violations since
19 Petitioner has only been in detention since November 5, 2025, and there has been no
20 indefinite detention beyond six months. Federal Respondents are actively working on his
21 case in finding a suitable third country to remove Petitioner to.

22 **A. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

23 Petitioner's motion should be denied because he has not established that he is
24 entitled to interim injunctive relief. The legal standard for issuing a TRO is essentially
25 identical to the standard for issuing a preliminary injunction. See *Stuhlberg Int'l Sales Co. v.*
26 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); see also *Zamfir v. Casperlabs, LLC*,
27 528 F. Supp. 3d 1136, 1142 (S.D. Cal. 2021). "A party seeking a preliminary injunction
28 must meet one of two variants of the same standard." *All. for the Wild Rockies v. Pena*, 865

1 F.3d 1211, 1217 (9th Cir. 2017). Under the *Winter* standard, a party is entitled to a
2 preliminary injunction if he demonstrates (1) that he is likely to succeed on the merits, (2)
3 that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the
4 balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter*
5 *v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); see *Nken v. Holder*, 556 U.S. 418, 426 (2009). A party
6 must make a showing on all four prongs. *A Woman’s Friend Pregnancy Res. Clinic v. Becerra*,
7 901 F.3d 1166, 1167 (9th Cir. 2018) (cleaned up). Plaintiffs must demonstrate a “substantial
8 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
9 When “a plaintiff has failed to show the likelihood of success on the merits, we need not
10 consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th
11 Cir. 2015).

12 The final two factors required for preliminary injunctive relief — balancing of the
13 harm to the opposing party and the public interest — merge when the Government is the
14 opposing party. See *Nken*, 556 U.S. at 435. The Supreme Court has specifically
15 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
16 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); see also *United States v.*
17 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. of California v. Orrin W.*
18 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
19 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
20 seeking injunctive relief “must show either (1) a probability of success on the merits and the
21 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance
22 of hardships tips sharply in the moving party’s favor.”) (quoting *Andrieu v. Ashcroft*, 253 F.3d
23 477, 483 (9th Cir. 2001)).

24 In this case, Petitioner cannot establish that he is likely to succeed on the underlying
25 merits, there is no showing of irreparable harm, and the equities do not weigh in his favor.

26 **B. Petitioner is not likely to succeed on the underlying merits**

27 A preliminary injunction is an “extraordinary remedy never awarded as of right.”
28 *Winter*, 555 U.S. at 7, 24. The first *Winter* factor — likely success on the merits — is “the

1 most important” and is a threshold inquiry. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.
2 2015). Petitioners carry the burden of demonstrating a likelihood of success (or alternatively
3 showing “serious questions going to the merits”). See *A Woman's Friend Pregnancy Resource*
4 *Clinic*, 901 F.3d at 1167; *Alliance for the Wild Rockies*, 865 F.3d at 1217.

5 In this case, Petitioner cannot establish that he is likely to succeed on the underlying
6 merits of his claims because his detention is lawful under 8 U.S.C. 1231 and has been less
7 than six months

8 **C. Petitioner Cannot Show Irreparable Harm**

9 To prevail on their request for interim injunctive relief, Petitioners must demonstrate
10 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th
11 Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197,
12 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. See
13 *Winter*, 555 U.S. at 22. And as discussed above, detention alone is not an irreparable injury.
14 See *Reyes*, 2021 WL 662659, at *3 (“[C]ivil detention after the denial of a bond hearing [does
15 not] constitute[] irreparable harm such that prudential exhaustion should be waived.”).
16 Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm
17 is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an
18 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
19 entitled to such relief.” *Winter*, 555 U.S. at 22. Here, as explained above, because
20 Petitioner’s alleged harm “is essentially inherent in detention, the Court cannot weigh this
21 strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL
22 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

23 **D. Balance of Equities Do Not Tip in Petitioner’s Favor**

24 It is well settled that the public interest in enforcement of the United States’
25 immigration laws is significant. See, e.g., *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58
26 (1976); *Blackie's House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has recognized
27 that the public interest in enforcement of the immigration laws is significant.”) (citing cases);
28 see also *Nken*, 556 U.S. at 435 (“There is always a public interest in prompt execution of

1 removal orders: The continued presence of an alien lawfully deemed removable undermines
2 the streamlined removal proceedings IIRIRA established and permits and prolongs a
3 continuing violation of United States law.”) (internal quotation omitted). The BIA also has
4 an “institutional interest” to protect its “administrative agency authority.” *See McCarthy v.*
5 *Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*,
6 534 U.S. 516 (2002). “Exhaustion is generally required as a matter of preventing premature
7 interference with agency processes, so that the agency may function efficiently and so that it
8 may have an opportunity to correct its own errors, to afford the parties and the courts the
9 benefit of its experience and expertise, and to compile a record which is adequate for
10 judicial review.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc.*, 30 F.4th 905, 913
11 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not
12 the courts, ought to have primary responsibility for the programs that Congress has charged
13 them to administer.” *McCarthy*, 503 U.S. at 145. Moreover, “[u]ltimately the balance of the
14 relative equities ‘may depend to a large extent upon the determination of the [movant’s]
15 prospects of success.’” *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012
16 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770,
17 778 (1987)).

18 In this case, as explained above, Petitioner cannot succeed on the merits of his claims
19 because his detention is lawful under 8 U.S.C. 1231 and *Zadvydas*. The balancing of equities
20 and the public interest weigh heavily against granting Petitioner equitable relief.

21 **E. Federal Respondents Have No Plans nor Intention to Remove Petitioner to**
22 **Mexico and therefore Petitioner is Not Likely to Succeed on the merits of his**
23 **claim that ICE violated its own regulations (Ground 1 of Amended Petition)**

24 On October 7, 2016, the IJ ruled that Petitioner shall not be removed to Mexico. See
25 Exhibit E. Federal Respondents have no intention nor plans to remove Petitioner to
26 Mexico because he was granted deferral of removal to Mexico under the CAT by the IJ.
27 See Exhibit E. The IJ Ordered that Petitioner be removed from the United States to any
28 country which is willing to accept him since Petitioner was denied asylum. See Exhibit E.

1 Since November 5, 2025, when Petitioner was detained, Federal Respondents have been
2 actively working to remove Petitioner to a third country. At the time of the filing of this
3 response, it would not have been sixty-two days since his detention and hence there has
4 been no violation of 8 U.S.C. § 1231(a)(6). Since his detention, Petitioner has filed a
5 Petition for Review and a Motion to Stay Removal with the Ninth Circuit which is
6 currently pending. At this stage it is unclear whether decisions from the Ninth Circuit will
7 be rendered within six months or afterwards. Petitioner may elect to pursue his legal
8 options as he sees fit in seeking to forestall or reverse his removal order; however, he
9 cannot rely on the resulting delay and time it takes for such events to be adjudicated to
10 claim that the United States government has violated his due process rights by continuing
11 to detain him during such time. *See Demore*, 123 S. Ct. at 1721fn. 14 (stating “there is no
12 constitutional prohibition against requiring parties” to “mak[e] ... difficult judgments.”
13
14 Therefore, Petitioner’s Motion for TRO should be denied.
15

16 **F. Petitioner is not Likely to succeed on the merits of his claim that his**
17 **detention violates *Zadvydas* and the Immigration and Nationality Act, 8**
18 **U.S.C. 1231(a)(6). (Grounds 2 and 3 of Amended Petition).**

19 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory
20 right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a
21 due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In
22 *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s
23 demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would
24 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme
25 Court proceeded to conclude that detention of a noncitizen for up to six months under 8
26 U.S.C. § 1231 is “presumptively reasonable” but added that “once the [noncitizen]
27 provides good reason to believe that there is no significant likelihood of removal in the
28

1 reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to
2 rebut that showing.” *Id.* at 700-01. In *Zadvydas*, the Supreme Court found that post-order
3 detention could be potentially indefinite as authorized under the open-ended terms of
4 § 1231(a)(6). Finding the possibility of indefinite detention troublesome, the Supreme Court
5 clarified that there is a point at which Congress’s interest in detaining a noncitizen to facilitate
6 his removal may eventually give way to the noncitizen’s liberty interest. This shift occurs
7 when detention becomes potentially indefinite. *Zadvydas*, 533 at 690 (“A statute permitting
8 indefinite detention of an [noncitizen] would raise a serious constitutional problem.”).

10 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale
11 of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order
12 detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal
13 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
14 have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the
15 *earliest* point at which criminal noncitizens’ detention could raise constitutional issues. *Id.*,
16 at 701. “This 6-month presumption, of course, does not mean that every [noncitizen] not
17 removed must be released after six months.” *Id.* Courts routinely deny habeas petitions that
18 are filed with less than six months of detention. *See, e.g., Kamara v. Warden*, No. 1:21-CV-4,
19 2021 U.S. Dist. LEXIS 94222, at *27-28 (M.D. Pa. Apr. 12, 2021)(Habeas petition denied
20 as Petitioner’s “current post-removal detention falls well within the 6-month presumptively
21 reasonable time frame defined by the Supreme Court in *Zadvydas*.”); *Lule-Arredondo v.*
22 *Holder*, No. C14-987-RSL-JPD, 2014 U.S. Dist. LEXIS 176932 (W.D. Wash. Nov. 17, 2014)
23 (“Should petitioner’s detention continue past the six-month presumptively reasonable period,
24 he may file a new habeas petition and obtain review.”); *Farah v. U.S. Att’y Gen.*, 12 F.4th
25 1312, 1332-33 (11th Cir. 2021) (“If after six months he is still in custody and has not been
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27
28

1 removed from the United States, then he can challenge his detention under section 1231(a).
2 But until then, his detention is presumptively reasonable under *Zadvydas*.”), *overruled on other*
3 *grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2 (2023).

4 In this case, there has been no “indefinite” detention under 8 U.S.C. § 1231 that
5 would raise a “serious question” under the Fifth Amendment’s Due Process Clause.
6 Petitioner has been detained since November 5, 2025. Petitioner has been detained for less
7 than six months since his arrest. Under *Zadvydas*, it is presumptively reasonable for
8 Petitioner to be detained up to six months 8 U.S.C. § 1231. *Id.* at 700-01. Petitioner’s
9 argument is not persuasive since his detention has only commenced on November 5, 2025,
10 and six months have not passed for him to legitimately argue a due process violation under
11 *Zadvydas* nor that his detention has been “indefinite”. Therefore, Petitioner has not yet been
12 in detention pursuant to 8 U.S.C. § 1231 for six months, and his detention in order to
13 effectuate his final order of removal is presumptively reasonable. Petitioner’s detention
14 under 8 U.S.C. § 1231(a)(6) is, as interpreted by the Supreme Court, squarely in accordance
15 with the government’s statutory authority and thus, the relief he seeks, is not warranted by
16 statute. *See* 8 U.S.C. § 1231(a)(6); *Arteaga-Martinez*, 142 S. Ct. at 1832-34. Petitioner’s
17 detention under 8 U.S.C. § 1231(a)(6) does not violate his due process rights as he has not
18 met his burden of setting forth good reason to believe that there is no significant likelihood
19 of his removal to a third country in the reasonably foreseeable future when he has only
20 been in detention since November 5, 2025. *See Zadvydas*, 533 U.S. at 701. Therefore,
21 Petitioner fails to demonstrate that he meets *Zadvydas*’ six-month detention requirement,
22 and Petitioner’s detention is thus presumed lawful and constitutional and his Motion for
23 TRO should be denied.
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26
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28 **G. Petitioner is not likely to succeed on the merits of his claim that ICE policy regarding third country removal violates due process and Administrative**

1 **Procedure Act pertaining to Petitioner (Grounds 4 and 5 of Amended**
2 **Petition)**

3 Section 1231(a)(6) satisfies both the substantive and procedural components of the
4 Due Process Clause. The Supreme Court has explained that detention is “a constitutionally
5 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). Post-order
6 detention helps ensure the removal of noncitizens who have already been “ordered removed”
7 from the United States. 8 U.S.C. § 1231(a)(6). Furthermore, § 1231(a)(6), as implemented
8 by the existing regulations, does not violate the Due Process Clause “[w]hen detention crosses
9 the six-month threshold.” *Diouf v. Napolitano (“Diouf II”)*, 634 F.3d 1091 (9th Cir. 2011).
10 Petitioner also asserts an APA claim. Civil APA claims are not cognizable in the habeas
11 context *See, e.g., Mesina v. Wiley*, 352 F. App’x 240, 241-42 (10th Cir. 2009) (holding that
12 petition asserting APA claim “does not state a habeas claim”).
13

14 In this case, Petitioner’s APA claim fails as a matter of law. Furthermore, there has no
15 due process violation since Petitioner has been detained for less than six months.
16

17 **III. Conclusion**

18 For the foregoing reasons, Federal Respondents respectfully request that the Court
19 deny Petitioner’s Motion for Temporary Restraining Order.

20 Respectfully submitted this 5th day of January 2026.

21 TODD BLANCHE
22 Deputy Attorney General of the United States
23 SIGAL CHATTAH
24 First Assistant United States Attorney

25 /s/ Tamer B. Botros
26 TAMER B. BOTROS
27 Assistant United States Attorney
28