IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ZU PING CHEN	)
	)
	)
Petitioner,	)
	)
v.	) Civil Action No.: 3:25-cv-00970-BL
	)
MELISSA B. HARPER Field Director	)
New Orleans Field Office, et al	)
	)
Respondents.	)

RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE SECOND EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION

Comes now, Respondents, by and through Kevin P. Davidson, Acting United States Attorney, and respectfully submit this response to the Court's order to show cause why a preliminary injunction should not issue. Petitioner Zu Ping Chen is a noncitizen of the United States who is subject to a final order of removal. Mr. Chen has been in ICE custody for less than a month. This is far short of the six-month period the Supreme Court has held to be presumptively reasonable for ICE to detain an individual to effectuate his removal. Thus, Mr. Chen's claims are not ripe. The Preliminary Injunction should be denied and the habeas action dismissed without prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a Chinese national who entered the country in August 1999. Doc. 1 ¶ 12. He has been subject to a removal order since 2003. *Id.* On February 24,

2026, his Order of Supervision ("OSUP") was revoked and he was taken into custody by ICE. Doc. 29–3. The OSUP was revoked pursuant to 8 C.F.R. § 241.4(*l*) due to a determination that the revocation was in the public interest and release was no longer appropriate.

LEGAL FRAMEWORK FOR POST-ORDER OF REMOVAL DETENTION, RELEASE, AND REVOCATION OF RELEASE

I. Statutory Framework

A removable noncitizen may be detained during removal proceedings and after receiving an order of removal that becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. Once subject to a final removal order, the authority for his detention shifts to § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021).

Section 1231 establishes a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following: (i) the date the order of removal becomes administratively final, (ii) if the removal order is judicially reviewed and if a court orders a stay of removal, the date of the court's final order, or (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

Under 8 U.S.C. § 1231, the Attorney General is required to detain noncitizens subject to such removal orders throughout the 90-day removal period. 8 U.S.C. § 1231(a)(1)–(2). Subsequently, a noncitizen ordered removed and determined by the Attorney General to be a "risk to the community or unlikely to comply with the

order of removal, may be detained beyond the [90-day] removal period." 8 U.S.C. §§ 1231(a)(2), (6); 8 C.F.R. §§ 241.4(a)(1), (4).

II. **Regulatory Framework**

The Code of Federal Regulations sets forth specific provisions regarding the release and revocation of release of a noncitizen with a final order of removal. Specifically, 8 C.F.R. § 241.4 is entitled "Continued detention of inadmissible, criminal, and other aliens [beyond the removal period" and relates to the release (and the revocation of release) of such noncitizens. Generally, regulations grant authority to designated officials with ICE (formerly the Immigration and Naturalization Service) to grant release or parole to a noncitizen, and the agency may continue a noncitizen's custody pursuant to applicable regulations. 8 C.F.R. § 241.4(a).

Revocation of release is governed by 8 C.F.R. §§ 241.4(*l*). Under Section 241.4(*l*), revocation can occur under two sets of circumstances: the noncitizen violates the conditions of release, § 241.4(*l*)(1), or ICE determines in its discretion to revoke release, § 241.4(*l*)(2). The regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. 8 C.F.R. § 241.4(*l*)(2). The ICE official must find one of the following: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) revocation is appropriate to enforce a removal order or to commence removal

proceedings; or (4) the conduct of the noncitizen, or any other circumstance, indicates release would no longer be appropriate. 8 C.F.R. §§ 241.4(*l*)(2)(i–iv).

ARGUMENT

This Court should deny Plaintiff's motion for a preliminary injunction. "A preliminary injunction is a powerful exercise of judicial authority" that should not be lightly granted. *Ne. Florida Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Florida*, 896 F.2d 1283, 1284 (11th Cir. 1990). To obtain the extraordinary relief he seeks here, Petitioner must "plainly establish": (1) "substantial likelihood" of success on the merits; (2) denial will result in irreparable harm; (3) granting the injunction will not result in irreparable harm to the defendants; and (4) granting the injunction is in the public interest. *Id.* The last two factors merge when the government is the opposing party.

The first two factors are the most critical. *See, e.g., id.* at 1285 ("A showing of irreparable harm is 'the sine qua non of injunctive relief') (citation omitted); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1226 (11th Cir. 2005) ("Controlling precedent is clear that injunctive relief may not be granted unless the [movant] establishes the substantial likelihood of success criterion.").

As explained below, these factors weigh against Petitioner, and his request for a preliminary injunction should be denied.

I. Petitioner Cannot Demonstrate a Likelihood of Success on the Merits.

A. Petitioner Has Not Established This Court's Jurisdiction

"As the familiar maxim goes, federal courts are 'courts of limited jurisdiction.' After all, [courts] 'possess only that power authorized by Constitution and statute.' For that reason, [a court] 'cannot extend [its] hand to seize topics Congress has put beyond [its] reach.'" *Camarena v. Dir., Immigration & Customs Enforcement*, 988 F.3d 1268, 1271 (11th Cir. 2021) (citations omitted). Here, Petitioner is not likely to succeed on the merits of his claims because jurisdiction is lacking for two independent reasons – lack of ripeness and the jurisdiction stripping impact of 8 U.S.C. § 1252.

i. Petitioner's Claims Are Not Ripe

The habeas petition is not ripe because Mr. Chen has not been in ICE custody for six months. Thus, the petition should be dismissed without prejudice and the requested preliminary injunction denied.

This Court's jurisdiction is limited by Article III of the United States Constitution "to cases and controversies of sufficient concreteness to evince a ripeness for review," and "[e]ven when the constitutional minimum has been met . . . prudential considerations may still counsel judicial restraint." *Victoria Media Group, LLC v. City of Roswell, Georgia*, No. 23-13610, 2024 WL 3493947, at *1 (11th Cir. July 22, 2024). The ripeness doctrine serves the important functions of "protect[ing] federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes," and protecting "agencies from

judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id.* at *2 (internal citations and quotes omitted).

To determine whether a matter is ripe, courts consider "(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration." Id. The court also must consider "whether the parties raise an issue that [can be decided] without further factual development[.]" *Id.*

In *Zadvydas v. Davis*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit a noncitizen's detention beyond the removal period to the period "reasonably necessary to bring about the alien's removal from the U.S." 533 U.S. 678, 689 (2001). The Court held that a period of six months from the date the removal order becomes final is presumptively reasonable. *Id.* at 701. But the Supreme Court cautioned that the "presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 695. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. Thus, the burden

is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52). "*Zadvydas* claims asserted prior to the presumptively reasonable six-month period are deemed unripe and subject to dismissal without prejudice." *Martinez-Marino v. Baker County Sheriff's Office*, No. 3:25-CV-854-JEP-MCR, 2026 WL 681812, at *2 (M.D. Fla. Mar. 11, 2026); *Flores-Reyes v. Assistant Field Off. Dir.*, No. 26-CV-20226, 2026 WL 406708, at *2 (S.D. Fla. Feb. 13, 2026); *M.O.G.R. v. Warden, Stewart Det. Ctr.*, No. 4:25-CV-356-CDL-AGH, 2025 WL 3460936, at *6 (M.D. Ga. Dec. 2, 2025); *Huete-Alvarez v. Bondi*, No. 26-CV-20991, 2026 WL 530196, at *4 (S.D. Fla. Feb. 26, 2026).

The upshot of this decision is straightforward. "[T]he Supreme Court . . . had occasion to consider the constitutional implications of indefinite detention under § 1231(a) ," and it "offered [courts] a standard through which to judge indefinite-detention cases—the *Zadvydas* standard." *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020); *see Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (*Zadvydas* "articulates the outer bounds of the Government's ability to detain aliens . . . without jeopardizing their due process rights"). Yet Petitioner now urges the Court to conclude that *Zadvydas*, in essence, was wrong. No doubt they will dispute this characterization, but there is no other way to understand this argument that

something more than the process set out in *Zadvydas* is required to vindicate their constitutional rights.

The Court should certainly decline this invitation. When, as here, the Supreme Court has spoken on the issue at hand, "[t]his Court is bound like all lower courts to apply [that] precedent." *United States v. Williams*, No. 1-09-cr-414, 2010 WL 3909480, at *4 (E.D. Va. Sept. 23, 2010); *see Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) ("It is beyond our power to disregard a Supreme Court decision . . . ."). There is accordingly no basis for the Court to hold that due process demands more than what the Supreme Court already held it requires in this circumstance. *See Hernandez-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018) (stating that to the extent petitioner sought periodic bond hearings in federal court, "*Zadvydas* addressed the extent to which due process demands relief in the § 1231(a) setting"); *M.P. v. Joyce, No.1:22-cv-06123,* 2023 WL 5521155, at *5-6 (W.D. La. Aug. 10, 2023)(finding petitioner was not in custody in violation of his procedural due-process rights where petitioner received requisite custody review panels, where petitioner's detention was not "indefinite" or "potentially permanent," and, "to the extent the *Mathews* factors" applied, the government's interests outweighed petitioner's); *cf. Roman v. Garcia*, No. 6:24-cv-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) (finding that petitioner's detention did not violate due process because the government could detain her beyond the 90-day removal period pursuant to § 1231(a)(6), and § 1231(a)(6) does

not require a bond hearing). Petitioner has received all the process to which he is entitled.

Mr. Chen was detained on February 24, 2026. The detention is aimed to effectuate his removal. Mr. Chen cannot show that he has been detained for a presumptively unreasonable time until late August. Thus, Mr. Chen cannot meet his burden. The Habeas Petition should be dismissed without prejudice and the motion for preliminary injunction denied.

ii. The Court Should Reject the Proffered *Matthews* Framework in Favor of *Zadvydas*.

Mr. Chen urges the Court to apply the three-part *Matthews* test in lieu of *Zadvydas*. Even if *Zadvydas* did not squarely govern Petitioner's claim, as it does, he would not be entitled to immediate release that he seeks. Courts across the country have applied different approaches to determine the constitutionality of continued detention under various immigration statutes. *See, e.g., Rimtobaye v. Castro*, No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786, at *2– 3 (W.D. Tex. Oct. 29, 2024), *report and recommendation adopted*, No. SA-23-CV-1529-FB, 2025 WL 377722 (W.D. Tex. Jan. 31, 2025) (collecting cases and comparing approaches).

Some courts, but not all, utilize the three-factor balancing test Petitioner urges here, which is set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), a case involving the termination of a citizen's social security benefits. *Id.* The Supreme Court, however, "when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*,"

Rodriguez Diaz, 53 F.4th at 1206–07, and Respondents do not concede that *Mathews* applies here.

Other circuits have applied the *Mathews* test to due-process challenges brought under § 1231(a)(6), the Eleventh Circuit, however, has not applied *Mathews* to due-process challenges to § 1231. Petitioner makes no argument as to why this Court should apply the *Mathews* test and offers no reason their procedural due-process claim should not be subject to the same standard as other due process challenges to § 1231. *Andrade v. Gonzales,* 459 F.3d 538, 543 (5th Cir. 2006). Petitioner has been adjudicated removable and had the benefit of the attendant processes. But even if the Court were to find that *Mathews* applies, the conclusion would nevertheless be the same—Petitioner's detention is not unconstitutional even under *Mathews*.

Mathews outlines a three-part "flexible" test to determine whether due process complies with the Constitution. *Mathews*, 424 U.S. at 321. Under *Mathews*, courts consider: (1) the individual's interest; (2) the risk of erroneous deprivation of the right absent further procedures; and (3) the government's interest. *Id.* at 334. Any analysis of these factors in the immigration context must "weigh heavily" the fact that "control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia,* 459 U.S. 21, 34 (1982). A correct application of the *Mathews* test weighs against ordering the immediate release Petitioner requests.

Clearly Petitioner has a liberty interest in freedom from lengthy imprisonment. However, Petitioner's liberty interest is diminished because they are subject to an order of removal. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). The Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. at 523 (emphasis added). Any assessment of the private interest at stake therefore must account for the fact that the Supreme

Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.").

Regarding the second *Mathews* factor, applicable statutes and regulations already provide extensive protections to all aliens detained under § 1231. There is no basis in law for imposing more procedures that neither Congress nor the relevant agencies have adopted. As a threshold matter, § 1231(a)(6) provides that DHS "may" detain an alien beyond the 90-day removal period— in other words, the decision is discretionary. And federal regulations set forth a framework for the exercise of that discretion. *See* 8 C.F.R. § 241.4. Though Petitioner tries to impugn the quality of these procedures, the Supreme Court concluded in *Zadvydas* that the process established in that case overcomes any constitutional concerns the applicable procedures might raise. *See* 533 U.S. at 692, 699-701; *see also Wang*, 320 F.3d at 146 (rejecting claim for bond hearing to justify continuing detention).

Finally, the government's interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews*, 426 U.S. at 81. Accepting Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime Congress adopted. In determining what process is due in immigration proceedings, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Mathews*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizen]s—to be a vital public interest." *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). It is thus clear that, in the removal process, "the government interest includes detention." *Id.* And the Supreme Court has stated removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Further, "[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines

the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty.").

Therefore, all three *Mathews* factors favor the Respondent, and this Court should accordingly dismiss the Petition.

<u>iii. This Court's Jurisdiction is Limited By 8 U.S.C. § 1252</u>

This Court lacks jurisdiction to review to review Respondent's decision to revoke the OSUP. *See Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025). In *Camarena*, the Eleventh Circuit explained that 8 U.S.C. § 1252(g) "bars federal courts from hearing 'any claim' by an alien 'arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.'" *Camarena*, 988 F.3d at 1272; see also *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *Johnson v. Acting United States Attorney Gen.*, 847 Fed. App'x 801, 801 (11th Cir. 2021). To determine whether a claim is barred under § 1252(g), the Court must focus on the challenged action. *Camarena*, 988 F.3d at 1272.

In this case, to the extent Petitioner seeks to enjoin the revocation of his OSUP and his subsequent removal. While the Respondents have not revoked Petitioner's OSUP, even if they had, these "claims fall squarely within § 1252(g)'s jurisdictional bar." *Id.*; *see, e.g., Espinoza-Sorto*, 2025 WL 3012786 at *5 (explaining that "§ 1252(g) deprives [the Court] of subject-matter jurisdiction over Respondents'

decision to revoke Petitioner's OSUP[.]"); *Nguyen v. Noem*, No. 6:25-cv-057-H, 2025 WL 2737803, at *7 (N.D. Tex. Aug. 10, 2025) (explaining that because of § 1252(g), "[t]he Court is thus skeptical that it would have the power to order the respondents to give notice to [the petitioner] and provide him an informal interview and the opportunity to respond and present evidence.").

Additionally, Section 1252(a)(2)(B)(ii) deprives the Court of jurisdiction over challenges to ICE's discretionary decision to revoke an OSUP. See, e.g., *Kanapuram v. Dir., U.S. Citizenship & Immigration Servs.*, 131 F.4th 1302, 1306 (11th Cir. 2025) (discussing the jurisdiction-stripping provisions of 8 U.S.C. § 1252(a)(2)); *Espinoza-Sorto*, 2025 WL 3012786 at *5 (explaining that "because the Attorney General has the discretion to revoke an OSUP," § 1252(a)(2)(B)(ii) "bars review of [that] decision."). While there is some authority allowing detainees to challenge the procedural correctness of the revocation decisions, that cannot be done where, as here, there is no evidence that Mr. Chen did not receive all the process he was owed by law.

B. Petitioner is Not Likely to Succeed on the Merits of His Due Process Claims

i. There Is No Requirement for Pre-Revocation Notice or Hearing

Even if there were no jurisdictional bar, the Petitioner cannot show a likelihood of success on the merits. Because ICE has not revoked Petitioner's OSUP, it is not clear whether any future revocation would implicate the regulations contained in 8 C.F.R. § 241.4(*l*) or § 241.13(i). Regardless, neither the regulations

nor due process require "written notice or an opportunity to be heard before a neutral decision maker prior to revocation," as Petitioner contends. Doc. 5-1 at 6.

The revocation procedures detailed in §§ 241.4(*l*)(1) and 241.13(i)(3) provide for notice of the reasons for revocation to be provided "[u]pon revocation," and for ICE to conduct an "informal interview" "promptly after" the return to custody. See §§ 241.4(l)(1); 241.13(i)(3). Thus, the plain language of the regulations and their use of the terms "upon" and "after"—neither of which encompass a time before revocation – do not support Petitioner's interpretation. See, e.g., *Nguyen* 2025 WL 2737803 at *6 ("Under the plain language of the regulation, notice and an informal interview are not prerequisites to detention. The regulation contemplates that these procedures will occur after detention because notice is to happen 'upon revocation' and the initial informal interview occurs 'after [the alien's] return to [ICE] Custody.'"); see also *Miles v. Fulton Bank*, No. 2:08cv202, 2008 WL 11444204, at *3 (E.D. Va. Sept. 30, 2008) ("Dictionary definitions illustrate that the usual, ordinary, and popular meaning of 'upon' is limited to the time immediately or very soon after an event.").

For this reason, multiple district courts both within and outside of the Eleventh Circuit have recognized that pre-revocation notice and opportunity to be heard are not required to comply with the regulatory procedure or to comport with due process. See, e.g., *Espinoza-Sorto*, 2025 WL 3012786 at **3, 6 (holding notice of revocation and informal interview conducted after detention complied with procedures to revoke OSUP under § 241.4(*l*)(1)); *Cedeno-Gonzalez v. Noem*, No. 2:25-

cv-00473, 2025 WL 2999583, at *8 (S.D. Ind. Oct. 27, 2025) (rejecting argument that "due process required an opportunity to be heard before" OSUP revoked and explaining that post-deprivation informal interview satisfies due process); *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at **2, 6 (S.D. Fla. Aug. 8, 2025) (recognizing that under § 241.13, notice provided at time of revocation proper); *Nguyen*, 2025 WL 2737803 at **2, 5 (notice of reasons for revocation provided at time of arrest and informal interview provided process due); *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018) (explaining § 241.13 does not require pre-revocation notice).

For these reasons, assuming no jurisdictional bar, Petitioner is not likely to succeed on the merits of his procedural due process claim.

ii. <u>Petitioner Is Similarly Not Likely to Prevail on His Substantive Due Process Claim, Which Hinges Upon a Faulty Factual Premise</u>

In support of his substantive due process claim, Petitioner alleges that none of the circumstances outlined in 8 C.F.R. § 241.4(l)(2) exist here. Petitioner is not likely to succeed on this claim for at least three reasons.

As discussed above, the Court lacks jurisdiction over this claim. Indeed, even in those instances where courts concluded they had jurisdiction over limited claims regarding purely procedural issues related to OSUP revocation, that jurisdiction did not extend to consideration of the underlying reasons for ICE's decision to exercise its broad discretion to revoke an OSUP as Petitioner requests here. *See, e.g., Ceesay*, 781 F. Supp. 3d at 155 (court explained it was not considering a challenge of ICE's substantive decision to revoke petitioner's OSUP); *Espinoza-*

Sorto, 2025 WL 3012786 at **5, 6 n.13 (explaining "the Court does not have jurisdiction to consider the propriety of Petitioner's OSUP revocation"); *Barrios*, 2025 WL 2280485 at ** 4, 6 n.16 (explaining the Court lacks jurisdiction to consider Petitioner's "argument that circumstances have not changed in such a way to warrant revocation.").

For each of these reasons, Petitioner is not likely to succeed on the merits of his substantive due process claim.

II. **Petitioner Cannot Establish the Remaining Factors**

Because Petitioner cannot establish likely success on the merits, the Court need not consider any other factors. See, e.g., *Schiavo*, 403 F.3d at 1225. However, those factors are similarly lacking here.

Petitioner has not established that denial of the preliminary injunction will cause him irreparable harm. The injury that Petitioner asserts may result from the revocation of his OSUP and his detention—assuming, without proof, that it would be done in an improper manner—is entirely speculative and too tenuous to support a finding of irreparable injury. *See, e.g., Ne. Florida Chapter of Ass'n of General Contractors of America*, 896 F.2d at 1285 (explaining that injury must be "neither remote nor speculative, but actual and imminent"). Further, this alleged injury is common to all those ICE has lawfully detained for the purpose of removal.

Nor has Petitioner established that a preliminary injunction would be in the public interest. The public has a significant interest in the application of immigration laws. And while protection of constitutional rights is always in the

public's interest, if, as here, Petitioner has not shown a likelihood of success on his constitutional claims, that public interest would not apply here.

III. The Court May Not Order ICE to Confine Petitioner in the Middle District of Alabama.

Mr. Chen again asks the Court to restrict his transfer outside of the Middle District of Alabama. For the reasons stated by the Court in its order denying the initial preliminary injunction, this request should be denied. Doc. 26 at 11–12 ("The determination of where to detain an alien is within the discretion of the Attorney General, and, as such, this court lacks the authority to enjoin the Respondents from transferring the Petitioner outside of this judicial district.").

CONCLUSION

For the foregoing reasons, the Court should dismiss the Habeas Petition as premature and deny Petitioner's motion for a preliminary injunction.

Respectfully submitted this 16th day of March, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have filed this case with the CM/ECF system which provided a copy of the same to all counsel of record.

Dated this 16th day of March, 2026.

/s/ Stephen D. Wadsworth
Assistant United States Attorney