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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

YONATHAN DONALDO SANTOS ZELAYA,

Petitioner,

v.

DANIEL BRIGHTMAN *et al.*,

Respondents.

Case No. 3:25-cv-3489-LL-DLL

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

I. INTRODUCTION

Petitioner Yonathan Donaldo Santos Zelaya has filed a habeas petition and a motion for temporary restraining order (TRO). ECF Nos. 1 and 2. For purposes of judicial efficiency, given the petition and TRO motion raise overlapping arguments, Respondents respectfully respond to both the petition and TRO motion herein. For the reasons below, the Court should deny Petitioner's request for interim relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Honduras. *See* Declaration of Deportation Officer Courtney St Clair-Guerrero ("St Clair-Guerrero Decl.") at ¶ 3. He unlawfully entered the United States without inspection in April 2000. *Id.* In 2008, Petitioner was convicted of robbery, in violation of Cal. Pen. Code § 211 and sentenced to two years in prison. *Id.* at ¶ 4. He was later apprehended by Immigration and Customs Enforcement (ICE) and issued an administrative order of removal pursuant to 8 U.S.C. § 1228(a) based on his robbery conviction as an aggravated felony under 8 U.S.C. §§ 1101(a)(43)(F) (a crime of violence) and (G) (a theft offense for which he was sentenced to one year or more). *Id.* at ¶ 5. On July 27, 2011, the removal order was effectuated, resulting in his removal from the United States to Honduras. *Id.* at ¶ 6.

In October 2013, Petitioner again unlawfully re-entered the United States, and was subsequently criminally convicted and detained. *Id.* at ¶¶ 8–10. Petitioner was then transferred to ICE custody on February 26, 2014, and ICE issued an order reinstating the June 9, 2011, removal order pursuant to 8 U.S.C. § 1231(a)(5). *Id.* at ¶¶ 9–11. This time, Petitioner claimed fear and was referred to U.S. Citizenship and Immigration Services (USCIS) for a reasonable fear (RF) review. He was found to have RF in returning to Honduras and placed in administrative proceedings before an Immigration Judge (IJ). *Id.* at ¶¶ 11–13.

On August 2015, the IJ granted the Petitioner's application for withholding of removal under the Convention Against Torture (CAT). *Id.* at ¶¶ 14–15. Petitioner

reserved appeal. He was granted a *Rodriguez* bond[1] on November 18, 2015. *Id.* at ¶ 16. Petitioner later withdrew his appeal with the Board of Immigration Appeals in December 2015, at which point the IJ's removal order became final. On or about February 10, 2016, Petitioner was released from ICE custody on an order of supervision (OSUP). *Id.* at ¶¶ 15–17.

On April 9, 2024, Petitioner was arrested by Chula Vista Police for violating Cal. Pen. Code §§ 211 and 182(a)(1), conspiracy to commit a crime. *Id.* at ¶ 18. On November 14, 2025, Petitioner reported to the ICE San Diego Field Office as required. *Id.* at ¶ 19. At the time, ICE intended to re-detain Petitioner for violating the terms of his OSUP (i.e., engaging in criminal activity after his release from ICE custody) and to effectuate his removal to an alternate country. Instead, ERO enrolled Petitioner in the Alternatives to Detention (ATD) program with GPS monitoring. *Id.*

ERO is currently working to identify a third country for Petitioner's resettlement. Standard ICE guidance and procedures provide that an ICE officer will provide written notice to the removable alien of the intended third country removal. The written notice identifies which country ICE intends to remove the alien to. ICE will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six or more hours after service of the Notice of Removal if the alien is provided reasonable means and opportunity to speak with an attorney prior to removal. *Id.* at ¶ 20.

Once a third country is identified, ICE will provide Petitioner with written notice, and if Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claims. *Id.* at ¶ 21.

[1] *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015) (stating that a noncitizen detained under certain provisions is entitled to a bond hearing at six months of custody and every six months thereafter in which the burden is on the Department of Homeland Security to prove that the individual is a flight risk or danger to the community).

III. ARGUMENT

A. Claims and Requests Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process.") (quoting 8 U.S.C. § 1252(g)). In other words, section 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Here, Petitioner's claims necessarily arise "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2) ("Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.").

Accordingly, to the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252.

B. Petitioner Fails to Establish Entitlement to Injunctive Relief

Even if this Court determines that it has jurisdiction over Petitioner's claims, Petitioner has not established that he is entitled to a TRO. Generally, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for temporary restraining order, a petitioner must "[1] establish that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate at least a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, [courts] need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the government is the opposing party. *See Nken*, 556 U.S. at 435. "Few interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985).

1. Petitioner is Unlikely to Succeed on the Petition's Merits

The relief Petitioner seeks in his TRO is "issuance of an immediate order barring the Respondents from removing Petitioner from the Southern District Court's

jurisdiction, should the Petitioner be present in the State of California at the time such order is issued, without notice to the court and approval by the court." ECF No. 2 at 2.[2]

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. So moving now to the merits of his petition, Petitioner argues that enrollment in Intensive Supervision Appearance Program (ISAP) or Alternative to Detention (ATD)—which currently requires him to wear an ankle monitor and mandates merely one monthly home visit and one monthly office visit—warrants habeas relief for two reasons: (1) "Respondents have imposed more restrictive custody conditions on Petitioner without providing any justification, despite there being no change of circumstances; and (2) "Respondents' continued custody of Petitioner, and the conditions thereof, violate the Fifth Amendment because the conditions constitute punishment, or, alternatively, are excessive relative to their regulatory purpose." ECF No. 1 at 3. Both arguments fail.[3]

a. A change of circumstance resulted in an individualized assessment that warranted a modification to Petitioner's conditions of supervision.

"The [Immigration and Nationality Act] provides that if an alien subject to a removal order is not removed within 90 days . . . he *shall be subject* to supervision under

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[2] Petitioner also sought an order to show cause why the petition should not be granted within three days, which the Court addressed in its December 11, 2025 Order requiring Respondents to respond to the petition and TRO motion by December 19, 2025. ECF No. 3.

[3] On the threshold issue whether Petitioner, who is subject to a final order of removal, is in "custody" to even petition a district court for habeas review, Respondents respectfully direct the Court to *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995). Still, to the extent Petitioner requests this Court enjoin or otherwise halt his potential removal, such an argument is improper. *See* Section III(A); *Xiaoyuan Ma v. Holder*, 860 F. Supp. 2d 1048, 1061–62 (N.D. Cal. 2012) ("No matter how Petitioner frames the argument in this case, the petition is one that seeks to halt a final order or removal. Such relief strips this Court of jurisdiction—barring it from exercising judicial review of the habeas petition.").

regulations prescribed by the Attorney General." *Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 527 (S.D.N.Y. 2009) (citing 8 U.S.C. § 1231(a)(1)(A) and (a)(3)) (emphasis added). And under such regulations, supervision of noncitizens with final removal orders, among other requirements, "shall contain various reporting requirements." *See id.* (citing 8 C.F.R. § 241.5(a)(1)). Critically, the conditions of supervision are not limited to the conditions set forth in 8 C.F.R. § 241(5)(a)(1)–(5). *See* 8 C.F.R. § 241.5(a) ("The order shall specify conditions of supervision, *but not limited to*, the following.") (emphasis added).

Here, a modification to Petitioner's conditions of supervision (i.e., GPS monitor, and monthly check-ins) was warranted because he was arrested for felony robbery and conspiracy in April 2024 by Chula Vista Police. This violated a term of his prior OSUP, which prohibited Petitioner from "engaging in criminal activity after his release from ICE custody." *See* St Clair-Guerrero Decl. at ¶ 19.

To the extent Petitioner raises a procedural due process violation, his arguments lack merit because he fails to identity a specific regulation or procedure ICE allegedly failed to follow when it modified his conditions of supervision. *See United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim . . . . Judges are not like pigs, hunting for truffles buried in briefs.").

Nor does Petitioner explain what specific and concrete prejudice, if any, he has suffered because of any alleged procedural defect as it relates to ICE's decision to implement the use of an ankle monitor or monthly check-ins after his recent arrest. For example, Petitioner did not submit a sworn declaration to show facts or harm sufficient to rise to a constitutional-level violation or demonstrating what, if anything, would have been different. *See Gonzaga-Ortega v. Holder*, 736 F.3d 795, 804 (9th Cir. 2013) (explaining that for an individual to succeed on a due process claim based on immigration proceedings, he "must demonstrate error and substantial prejudice to prevail"); *Dent v. Sessions*, 243 F. Supp. 3d 1062, 1073 (D. Ariz. 2017) ("Even if the

INS mailed the Notice of Proposed Recommendation of Denial of Petition for Naturalization to all of Dent's former addressees, as Dent contends it should have done, it would not have made any difference.").

In any event, the evidence reflects that ICE made an individualized, "case by case" determination that Petitioner's recent arrest justified his enrollment into ATD because (i) he reported to ICE with three minor children, and (ii) he claimed there was no other adult to care for them. *See* St Clair-Guerrero Decl. at ¶ 19; Exhibit 2 (Petitioner's ATD Participant Enrollment Form stating Officer should "[d]etermine supervision levels on a case by case basis" and including relevant criminal history).

b. Petitioner's current supervision conditions are lawful because they are rationally related to a legitimate government interest.

Petitioner also claims that his current supervision conditions violate the Fifth Amendment because his enrollment in ISAP "constitute[s] punishment, or, alternatively, are excessive relative to their regulatory purpose." ECF No. 1 at ¶ 6. This claim also lacks merit. Petitioner fails to cite to any case law or authority for the proposition that alternatives to detention, such as regular check-ins with ICE or electronic monitoring, violate an individual's right to due process of law. *See United States v. Ramirez*, 448 F. App'x 727, 729 (9th Cir. 2011) (stating "a single sentence without citation to authority" is "an undeveloped argument" amounting to waiver).

Indeed, courts agree that similar conditions of supervision do not violate due process of law. "The liberty interest at issue in ISAP is not fundamental as applied to final-order aliens." *Nguyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1114–15 (D. Oregon 2006) (citing *Demore v. Kim*, 538 U.S. 510, 521 (2003)). "Because the right at stake is not fundamental, the government's action is subject only to rational basis review." *Id.* at 1115 (citing *Kim*, 538 U.S. at 528). The government action therefore survives a "rational basis review if it is rationally related to a legitimate government interest." *Id.* (citation and internal quotation marks omitted).

Consider the case in *Nguyen*. There, the petitioners "contend[ed] that the ISAP requirements that participants adhere to curfews and wear electronic monitoring bracelets during the intense phase of the program violat[ed] their constitutionally protected liberty interest." *Id.* at 435 F. Supp. 2d at 1114. The court disagreed. Dispelling with the petitioners' substantive due process argument, the court recognized that monitoring individuals with final orders of removal through the ISAP program furthered two legitimate government interests: (i) "[r]educing the number of absconding aliens"; and (ii) "protecting the community from aliens with criminal propensities[.]" *Id.* at 1115. Regarding the first government interest, the court recognized the extreme obstacles ICE faced:

> ICE has an extremely difficult undertaking: administering and supervising thousands of illegal aliens who cannot be deported and who cannot be detained indefinitely while waiting for removal. As evidenced by the high rate of absconder among this group, ICE deportation officers who regularly handle caseloads of 1,000 or more aliens do not have the time or resources to meet the agency's goal of accounting for and being able to produce any alien who becomes removable. Respondents' evidence shows that ISAP has significantly reduced the number of absconders among aliens placed in the program. *Id.*

For these reasons, courts that have addressed challenges to the ISAP program have regularly held that such post-removal supervision is rationally related to legitimate government interests. *See, e.g.*, *Gozo v. Mayorkas*, No. 1:23-cv-159, 2024 WL 2027510, at *4 (S.D. Tex. March 4, 2024) (finding that ICE's use of ISAP, which included GPS ankle monitoring, "is rationally related to the government's interest in monitoring aliens under a final removal order and protecting the community")[4]; *Ahmed v. Tate*, No. 4:19-cv-4889, 2020 WL 3402856, at *5 (S.D. Tex. June 19, 2020) (stating

[4] There, the District Judge did not rule on the Magistrate Judge's Report and Recommendation because ICE removed the petitioner's ankle monitor when it took him into detention pending his removal, thereby mooting the issue. *See Gozo v. Mayorkas*, 1:23-cv-159 (S.D. Texas Dec. 12, 2022), ECF No. 49 (dismissing petition as moot).

that "ICE's use of ISAP, which includes GPS ankle monitoring, is not an abuse of discretion" and that "[c]ourts faced with these cases have uniformly found that Government's actions to be reasonable and rationally based); *López López v. Charles*, No. 12-cv-101445-DJC, 2020 WL 419598, at *4 (D. Mass. Jan. 26, 2020) (holding that a GPS tracking device placed on an alien who has been ordered removed does not state a claim for a violation of due process); *Diawara v. Sec'y of Dep't of Homeland Sec.*, No. AW–09–2512, 2010 WL 4225562, at *2 (D. Md. Oct. 25, 2010) (ISAP requirements including ankle bracelets do not violate alien's liberty interests).

In fact, even more rigorous conditions of supervision have survived judicial scrutiny. For example, in *Zavala v. Prendes*, No. 3-10-CV-1601-K-BD, 2010 WL 4454055, at *2 (N.D. Tex. Oct. 5, 2010) (Report and Recommendation adopted by 2010 WL 4627736 (N.D. Tex. Nov. 1, 2010)), the petitioner unsuccessfully challenged far more rigorous conditions that required him to "(1) to report in person to the immigration office *every Monday*, and be at home afterward every Monday at 4:00 p.m. to meet with his case specialist; (2) to wear a leg monitor at all times; (3) to have quarterly meetings with his probation officer; and (4) to be at home by 8:00 p.m. every evening." Despite these conditions—and opining that "less burdensome conditions may achieve the same results," the *Zavala* court nonetheless held that "habeas relief is not proper." *Id.* at *2.

The same result is required here, especially when Petitioner complains only of his ankle monitor and monthly in person report to ICE and home visit by ICE. *See Iruene v. Weber*, No. 3:12-cv-1864, 2012 WL 5945079, at *3 (N.D. Tex. Aug. 1, 2012) ("[P]etitioner has alleged no particular violation of her due process rights. She challenges the ISAP generally because she does not want to wear the ankle monitor and does not believe she should have to do so. She has not shown that she is entitled to the relief on this basis.") (Report and Recommendation adopted by 2012 WL 5995350 (N.D. Tex. Nov. 28, 2012)).

c. Re-detention, "threatened" re-detention, and potential removal to a third country

In his petition, Petitioner seeks relief including: (1) a writ "ordering Petitioner's immediate release without any Order of Supervision, and enjoin re-detention absent a constitutionally adequate pre-deprivation hearing"; (2) an order to show cause "directing Respondents to justify any continued placement under an Order of Supervision and any threatened re-detention"; and (3) a declaration that "any continued or threatened deprivation of Petitioner's liberty—including re-detention after his grant of withholding of removal under the Convention Against Torture—violates 8 U.S.C. § 1231, its implementing regulations, and the Due Process Clause of the Fifth Amendment." ECF No. 1 at 13. These arguments also lack merit.

Foremost, this issue is not ripe because it would be premature at this stage to declare any potential re-detention or third country removal of Petitioner to arise to a constitutional violation. Petitioner states that on November 19, 2025, he attended an appointment with ICE with his attorney, during which time the ICE officer stated that "it was the intention of the officer in charge of Petitioner's case to take Petitioner into custody at the next check-in date, December 3, 2025." ECF No. 1 at ¶ 29. Yet, during his next check-in with ICE, on December 3, 2025, Petitioner acknowledges that he was not detained. *Id.* at ¶ 30.

Petitioner is not yet detained. It would therefore be speculative to determine what ICE *will* or *will not* do in the future, *when* and *how* re-detention will occur, and the circumstances under which any potential re-detention will occur. *See Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009) ("[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all."); *J.P. v. Santacruz*, No. 8:25-cv-01640, 2025 WL 2998305, at *4 (C.D. Cal. Oct. 24, 2025) (reasoning that the Petitioner's alleged threat of future injury was "too speculative and unripe").

While it is true that ICE intended to detain Petitioner at one point and is preparing to remove Petitioner to a third country, these facts alone do not require judicial

intervention at this moment. Petitioner is *not* detained; has *not* received a Notice of Revocation of Release; has *not* been served with written notice of ICE's intent to remove him to a third country; has *not* made a claim of reasonable fear of third-country removal to ICE; has *not* undergone a reasonable fear interview (RFI); and has *not* received a negative determination of his RFI. *See* St Clair-Guerrero Decl. at ¶¶ 20–21 (explaining ICE's process for handling third party removals).[5] It is therefore premature to litigate over facts that currently do not exist nor issues that have yet to ripen.

The basic rationale of the ripeness doctrine "is to prevent courts, through premature adjudication, from entangling themselves in abstract disagreements." *Thomas v. Union*, 473 U.S. 568 (1985). The Ninth Circuit cautions courts that their role is "neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies[.]" *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). Yet, this is exactly what Petitioner asks this Court to do.

2. Petitioner Has Not Shown Irreparable Harm

Petitioner also fails to demonstrate irreparable harm. To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *Winter*, 555 U.S. at 22. And detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is

[5] A court in this district has addressed the question of third country removals in circumstances far more factually developed than this instant case. *See, e.g., Azzo v. Noem*, No. 3:25-cv-03122, 2025 WL 3535208, at *1 (S.D. Cal. Dec. 10, 2025) (stating Petitioner was arrested at his required check-in appointment and received a Notice of Revocation of Release).

inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Here, Petitioner claims that, "[w]ithout a TRO, Petitioner will be imminently transferred out of the jurisdiction of the Southern District of California. This will transfer Petitioner away from his lawyers and his family, possibly seeking to undermine this court's jurisdiction." *See* ECF No. 2 at 3.

Petitioner's argument on irreparable harm is similarly (i) premature and unripe and (ii) alternatively, speculative, conclusory, and vague. *See* ECF No. 2 at 3–4. As stated above, Petitioner has neither received a Notice of Revocation of Release nor been detained. There is no factual basis to conclude that he will be removed from this District imminently. Moreover, once ICE identifies a third country for resettlement, standard ICE guidance and procedures provide that an ICE officer will provide written notice to the removable alien of the intended third country removal, and, if Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claims. *See* St Clair-Guerrero Decl. at ¶¶ 20–21.

Petitioner suggests that being subjected to allegedly unjustified conditions of ISAP itself constitutes irreparable injury.[6] But a similar argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. April 5, 2019).

Here, Petitioner faces the common alleged harm as numerous habeas petitioners under supervision pending removal, and he has not shown extraordinary circumstances warranting injunctive relief. His claim of irreparable harm is therefore vague, conclusory, and speculative.

[6] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken*, 556 U.S. at 435.

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

It is well settled that "the public interest in enforcement of the immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (collecting cases); *see also Nken*, 556 U.S. at 436 ("There 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 [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996] established, and permits and prolongs a continuing violation of United States law.") (simplified). Moreover, "ultimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at *4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)).

Critically the *Nguyen* court recognized that, while there was a "high rate of absconders" among noncitizens not "detained indefinitely while waiting for removal," the evidence shows "that ISAP has significantly reduced the numbers of absconders among aliens placed in the program." 435 F. Supp. 2d at 1115.

Here, Petitioner has repeatedly violated the law. Not only was he recently arrested, but he also unlawfully entered the United States on two separate occasions, the second of which occurred after he had been removed. *See* St Clair-Guerrero Decl. at ¶¶ 3–10. Thus, ensuring Petitioner remains locatable through GPS is even more critical because ICE is preparing to remove him to a third country, and it is possible that he will seek to evade ICE or fail to show up to future appointments. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) ("The risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent.").

Petitioner therefore cannot succeed on the merits of his claims, and the public interest in the prompt execution of removal orders is significant. The balancing of equities and the public interest thus weigh heavily against granting equitable relief in this case.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's motion for injunctive relief and dismiss Petitioner's habeas petition.

DATED: December 19, 2025

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