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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ENRIQUE M.S., Petitioner-Plaintiff, v. TONYA ANDREWS, in her official capacity, Facility Administrator of the Golden State Annex, *et al.*, Respondents.[1]	CASE NO. 1:25-CV-01811-TLN-CSK RESPONSE TO ORDER TO SHOW CAUSE AND OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION DATE: December 29, 2025 TIME: 9:00 a.m. COURT: Hon. Troy L. Nunley

Respondents respond to this Court's December 19, 2025 Order to Show Cause why the Court's Temporary Restraining Order should not be made a Preliminary Injunction by establishing that this Court granted the Temporary Restraining Order based on a clearly erroneous factual finding: that there was no final order of removal prior to M.S.'s detention. As a result, *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008) by its own terms does not apply to Petitioner's detention because there is a final order of removal and Petitioner's petition was filed after the final order was issued. As a result, this Court does not have jurisdiction over the habeas petition or the ability to issue the temporary restraining order, and the temporary restraining order should be dissolved and the habeas petition dismissed. In addition, this

[1] Respondents move to strike and to dismiss all improperly named officials. A petitioner seeking habeas corpus relief may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Doe v. Garland,* 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). In the instant case, Petitioner's custodian is the facility administrator at the Golden State Annex, located in McFarland, California.

Court should deny Petitioner's Motion for Preliminary Injunction because he did not and cannot meet the heavy burden required to justify such relief. Accordingly, Petitioner fails to meet his burden, and the request for a preliminary injunction should be denied.

I. BACKGROUND

Petitioner is a native and citizen of Mexico. Gallenkamp Decl. ¶ 4, Exh. 8 at 1. Petitioner admitted Mexican citizenship in 1999, when he made a false claim of U.S. citizenship when applying for admission, and again admitted Mexican birth and citizenship after entering without inspection in 2001. Gallenkamp Decl. ¶¶ 4-6; Exh. 1-2, Exh. 3; Exh. 8 at 1-2. After a conviction for a violation of California Penal Code § 243(e)(1), domestic battery, Petitioner voluntarily returned to Mexico on December 23, 2004. Gallenkamp Decl. ¶ 7, Exh. 4; Exh. 8 at 2.

Initial Removal Proceeding and Claim of U.S. Citizenship

On December 27, 2004, Petitioner was apprehended near Otay Mesa, California. Exh. 8 at 2. DHS issued a Notice to Appear alleging that he: (1) is not a citizen or national of the United States; (2) is a native and citizen of Mexico; (3) arrived in the United States near Otay Mesa, California on or about December 26, 2004; and (4) was not admitted or paroled after inspection by an immigration officer, and charged Petitioner with removability as an alien present without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). Gallenkamp Decl. ¶¶ 7-8, Exh. 5, Exh. 8 at 2. This is when Petitioner first litigated his claim that he was a United States citizen. Exh. 8 at 2-3. On April 26, 2005, the immigration judge found Petitioner not credible, but gave him another chance to produce witnesses to his birth and his mother's testimony. Exh. 8 at 3, 11. At the final hearing on August 10, 2005, the immigration judge terminated the removal proceedings, finding that there was reason to believe that Petitioner was born in El Cajon, California based on the testimony of Petitioner's aunt. Gallenkamp Decl. ¶ 9, Exh. 6, Exh. 8 at 3, 13.

Reopened Removal Proceedings and Rejection of Petitioner's Citizenship Claim

On August 3, 2017, DHS filed a motion to reopen based on the discovery of Petitioner's Mexican birth record, [redacted] and reporting his birth in Tabasco, Mexico on [redacted] Gallenkamp Decl. ¶ 11, Exh. 7 (exhibit A); Exh. 8 at 3-4. In addition, DHS obtained an amended order ruling that the Delayed Registration of Birth that Petitioner obtained in 2006 was a "Record identified as fraudulent by the United States Border Patrol." Exh. 7, (exhibit B). The existence of the Mexican birth record created a rebuttable presumption of alienage. Exh. 8 at 4. An immigration judge granted DHS's motion to reopen the 2004 removal proceedings on August 28, 2017. Gallenkamp Decl. ¶ 11, Exh. 7 (order granting motion to reopen); Exh. 8 at 4. Over the course of five years of litigation, Petitioner failed to produce his mother as a witness to his birth, Petitioner gave inconsistent testimony that was not credible, and even denied his criminal convictions and fingerprint evidence of his prior removals. Exh. 8 at 4-5; 10-13. On December 10, 2021, the immigration judge held that DHS met its burden of proving alienage based on the birth record and Petitioner's own sworn statements that he is a native and citizen of Mexico. Gallenkamp Decl. ¶¶ 12-13, Exh. 8; Exh. 8 at 5. The immigration judge then sustained the charge of removability. Gallenkamp Decl. ¶ 13, Exh. 8; Exh. 8 at 5.

Petitioner filed a motion to terminate proceedings, again alleging that he is a U.S. citizen, and again submitted a San Diego County Superior Court order delaying registration of birth. Gallenkamp Decl. ¶ 10; Exh. 8 at 6. The immigration judge rejected the motion to terminate, and Petitioner's evidence, and sustained the allegations in the Notice to Appear. Exh. 8 at 14-15. Petitioner did not claim any forms of relief from removal, and is ineligible for cancellation of removal due to his criminal record, including an aggravated felony drug trafficking offense. Exh. 8 at 16. In 2010, Petitioner was convicted of violations of California Penal Code § 288(a), a sexual abuse of a minor crime, and California Penal Code § 647.6(a)(1). Gallenkamp Decl., Exh. 7 (rap sheet); Exh. 8 at 16. The immigration judge ordered Petitioner removed on August 24, 2022. Gallenkamp Decl. Exh. 8.

Petitioner Appeals, the BIA Affirms, Making the Order of Removal Final

Petitioner appealed to the Board of Immigration Appeals. Gallenkamp Decl. ¶ 14, Exh. 9 at 1. On February 24, 2025, the BIA dismissed the appeal, finding that the immigration judge's factual findings were not clearly erroneous. *Id.* The BIA also rejected procedural grounds for appeal. Gallenkamp Decl. ¶ 14, Exh. 9 at 2-3. Because the BIA dismissal affirmed the disposition of the Petitioner's claims, it became a final order of removal. *See Rizo v. Lynch*, 810 F.3d 688, 691 (9th Cir. 2016) ("This order of removal then became final when the BIA affirmed the IJ's disposition of Rizo's claims."); 8 U.S.C. § 1101(47)(B) ("The order described under subparagraph (A) shall become final upon the earlier of-- (i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.").

Petitioner Files a Petition for Review before the Ninth Circuit

Petitioner filed a petition for review of the BIA's dismissal of his appeal on March 6, 2025. Exh. 10 at 1, Ninth Circuit Docketing Notice, Case 25-1429. In the petition for review, Petitioner states, "Petitioner Enrique [S.M.] hereby petitions for review by this Court of the *final order of removal* entered by the Board of Immigration Appeals on 24 February 2025. Exh. 10 at p.4 (petition for review at p. 2 (emphasis added)). It also asserts jurisdiction "pursuant to 8 U.S.C. § 1252(a)(1)." *Id.* Finally, the petition for review states that it "is timely filed pursuant to 8 U.S.C. § 1252(b)(1), as it is filed within 30 days of the *final order of removal*." *Id.* (emphasis added). The docketing notice states that a stay of removal is in effect. Exh. 10 at p. 1. On May 22, 2025, Petitioner filed a request for extension of time, and ultimately filed an opening brief on June 27, 2025. Exh. 11, Docs. 10, 12. On December 2, 2025, DHS filed its answering brief. Exh. 11, Doc. 19.

Petitioner Is Detained and Petitions This Court.

The Department of Homeland Security detained Morales-Sanchez on August 12, 2025 under INA § 241(a)(6) / 8 U.S.C. § 1231(a)(6). Gallenkamp Decl. ¶ 16; ECF 1 at ¶¶ 1, 2, 6, and 19. On December 11, 2025, the petitioner filed a pro se petition alleging that he is a United States citizen by birth, and providing no further facts other than his date of detention and that he was contesting his detention as a U.S. citizen. ECF 1 at ¶¶ 18, 23. This Court construed his petition as a motion for a temporary restraining order and granted a temporary restraining order and immediate release without conditions, enjoined the Respondent from re-detaining the petitioner without a judicial determination, and issued an order to show cause why the temporary restraining order should not be made into a preliminary injunction. ECF 8.

II. ARGUMENT

A. Legal Standard for Preliminary Injunction

Respondents first note that, "Ordinarily, temporary restraining orders, in contrast to preliminary injunctions, are not appealable." *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir. 2002). Preliminary injunctions are extraordinary remedies "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Petitioner's burden is aptly described as "heavy." *Id.* A preliminary injunction requires "substantial proof" and a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

B. <u>This Court Lacks Jurisdiction to Order Relief.</u>

i. *Iasu* controls on the question of jurisdiction, not *Flores-Torres.*

Title 8, United States Code, Section 1101(47)(B) states, "The order described under subparagraph (A) shall become final upon the earlier of-- (i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." In *Iasu v. Smith*, 511 F.3d 881, 885 (9th Cir. 2007), the petitioner filed his § 2241 habeas petition in district court, "challenging his indefinite detention under *Zadvydas v. Davis*," *after* entry of the final order of removal and "[a]fter being remanded into federal custody." Similarly, in this case, Petitioner was only detained *after* the immigration judge's order of removal became final. *See* Exh. 10 at p. 4. *Iasu* is not distinguishable, because in that case, the alien challenged his indefinite detention, and then amended his petition to add his nationality as grounds for voiding his detention. 511 F.3d at 885. The Ninth Circuit affirmed dismissal of Iasu's habeas petition for lack of jurisdiction.[2] *Id.* at 893. *Iasu* is controlling, and factually indistinguishable from this case, because both involve challenges to detention after issuance of a final order of removal. *Id.* at 885; ECF 1 at ¶¶ 18,

[2] The Ninth Circuit further noted that, the REAL ID Act did not violate the Suspension Clause of the Constitution because it provided for use of a petition for review to challenge a final order of removal. *Id.* at 892; *see also Gonzales-Alarcon v. Macias*, 884 F.3d 1266, 1278 (10th Cir. 2018) (citing *Iasu* and collecting cases); *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006) ("Section 106 of the Real ID Act does not violate the Suspension Clause of the Constitution because it provides, through review by a federal court of appeals, an adequate and effective remedy to test the legality of an alien's detention.").

23. Therefore, this Court should dismiss the petition and dissolve its temporary restraining order.

ii. The decision in *Flores-Torres* explicitly applies only to detention prior to a final order of removal.

In *Flores Torres v. Mukasey*, 548 F.3d 708, 711 (9th Cir. 2008), the Ninth Circuit reiterated that "Recently, we interpreted [8 U.S.C. § 1252(b)] as requiring that *challenges to removal orders*, based on a claim to citizenship, be brought in a petition for review." (citing *Iasu v. Smith*, 511 F.3d at 889). The panel specified that in *Flores-Torres*, the petitioner's petition, "unlike Iasu's does not challenge any final order of removal but challenges his *detention* prior to the issuance of any such order."[3] *Flores-Torres* 548 F.3d at 711 (emphasis in original, for this brief's purposes, emphasis would be on "prior"). In fact, Flores-Torres filed his petition for writ of habeas corpus on February 21, 2008, and the opinion noted that "[o]n August 1, 2008, the IJ again denied Torres's citizenship claim" thus establishing that the habeas petition was filed before any order of removal. 548 F.3d at 710.

The precise holding in *Flores-Torres* emphasizes the temporal and procedural distinctions that caused the Ninth Circuit to carve out a narrow exception to the jurisdiction stripping provisions of the REAL ID Act, stating, "We hold that Torres does not have to wait until his removal proceedings are completed and a final order is issued before he can secure habeas review of his citizenship claim and of his contention that he may not be detained under the INA." In short, *Flores-Torres* only applies if the habeas petition is filed before[4] an order of removal. *Id.*

In *Carrillo-Lozano v. Stolc*, 669 F.Supp.2d 1074, 1076 (D. Ariz. 2009), Judge Snow of the District of Arizona was confronted with a situation where the petitioner, "[i]n addition to appealing the BIA's removal order to the Ninth Circuit, Petitioner also sought collateral relief through the instant Petition for Writ of Habeas Corpus... assert[ing] that his current detention by the U.S. Office of Immigration and Customs Enforcement ("ICE") violates his due process rights." The petitioner also asserted that he was entitled to a bond hearing that shifts the burden to the government. *Id.* In dismissing the habeas petition,

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[3] Respondents note that in *Flores-Torres*, the petitioner was detained for over two years before the IJ rejected his citizenship claim. 548 F.3d at 712.

[4] Respondents also note that because of the issuance of the IJ's order of removal, the Ninth Circuit found that "[t]he second part of Torres's petition regarding detention without an individualized custody hearing is now moot." 548 F.3d at 710.

Judge Snow rejected application of *Flores-Torres*, reasoning:

> The facts of the instant case present a situation similar to *Flores-Tores*, but with one significant distinction. While the petitioner in *Flores-Torres* filed his petition for a write of habeas corpus *prior to* the issuance of a final order of removal, the Petitioner in this case filed his Petition *after* the BIA issued the final, appealable, removal order.[5]

Carillo-Lozano, 669 F.Supp.2d at 1078 (citing *Iasu*, 511 F.3d at 889). Judge Snow concluded that when "the administrative tribunals have issued their final ruling on Petitioner's citizenship claim and have ordered him removed, it cannot be said that the instant challenge to Petitioner's detention on the basis of nationality 'does not ... involve a final order of removal.'" *Id.* at 1078; *accord Lopez-Velazquez v. Johnson*, 2016 WL 4073338 at *5 (N.D. Cal. August 1, 2016) (distinguishing *Flores-Torres* based on final order, and because "the validity of a final order of removal is at issue here"); *Hopper v. Clark*, 2010 WL 1537184 at *1 (W.D. Wash. April 15, 2010) (rejecting application of *Flores-Torres* when there was a pending petition for review before the Ninth Circuit). Finally, Judge Snow noted, "To read *Flores-Torres* more broadly than this would eviscerate any practical application of the REAL ID Act's exclusive jurisdiction provisions with respect to final orders of removal." *Carrillo-Lozano*. at 1078-79; *accord Macias v. Garland*, 2025 WL 908037 at *2 (C.D. Cal. January 22, 2025) (noting removal order restricted review to the Ninth Circuit and dismissing petition and *Zadvydas* claim).

Flores-Torres only applies to habeas challenges to detention before a final order of removal is filed. In this case, under Title 8, United States Code, Section 1101(47)(B), a final order of removal was issued and the BIA affirmed the order, making it final. In his Ninth Circuit filing, the Petitioner acknowledges there is a final order of removal. Exh. 10 at p. 4. Therefore, *Iasu* applies, not *Flores-Torres*, and this Court lacks jurisdiction over the habeas petition and any claims that are inextricably linked to the order of removal. *See J.E.F.M v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016) (holding that "right-to-counsel claims must be raised through the PFR process because they 'arise from' removal proceedings" and "are bound up in and an inextricable part of the administrative process"); *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012) ("When a claim by an alien, however it is framed, challenges the procedure and substance of an agency determination that is 'inextricably linked' to the

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[5] In *Carrillo-Lozano*, the petitioner "brought two separate appeals to the Ninth Circuit" after "the BIA affirmed the Immigration Court's decision". 669 F.Supp.2d at 1076.

order of removal, it is prohibited by section 1252(a)(5)"). Respondents respectfully request that this Court dismiss the habeas petition, as well as any claims that arise from or are bound up in and an inextricable part of the administrative process.

C. <u>**Petitioner Was not Detained for More than the 180 Days, Which is Presumed Reasonable While Awaiting Removal.**</u>

1. The Petitioner is not likely to prevail on his claim of citizenship.

Regardless of the jurisdictional bar, the Petitioner cannot satisfy his heavy burden of demonstrating that he is entitled to a preliminary injunction or release. The Petitioner was found not credible by two immigration judges, and failed to rebut the presumption of validity of a prior Mexican birth certificate and his prior sworn statements that he is a citizen and national of Mexico, and born in Mexico. Exh. 8 at 1-5, 14-16. The fraudulently obtained delayed birth record and fraudulently obtained Social Security card, as well as the inconsistent and contradictory statements of his relatives were not persuasive to the immigration judge. Gallenkamp Decl., Exh. 8 at pp. 13-15.

2. Petitioner's detention under *Zavdyvas* was presumptively reasonable.

The Immigration and Nationality Act (INA) governs detention and release during and following removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When someone has received a final removal order, detention is mandatory for 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). The Court's Order claims that "Respondents have not shown such an exception exists." ECF 8 at p. 5. The Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) specifically recognizes an exception for aliens detained because they are subject to a final order of removal. Such detainees have due process protection, and the Supreme Court has set forth the basic limitation by clearly holding that a detainee can be detained "until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (2001). The Supreme Court approximated this period to be six months, after which, if the detainee provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to respond with evidence sufficient to rebut that showing. *Id.* This limitation is linked to the statute's "basic purpose," which is to "assur[e] the alien's presence at the moment of removal." *Id.* at 699. Applying this framework, Petitioner is unlikely to succeed on the merits. First, the INA authorizes ICE to detain Petitioner as someone subject to a final removal order, to effectuate his removal. 8 U.S.C. § 1231.[6] And the Supreme Court explicitly stated that detention for approximately 180 days is presumptively reasonable. *Id.*

3. Petitioner's requests for stay of removal cannot be the basis for a prolonged detention claim under § 1231.

Given the procedural posture of his case, Petitioner cannot state good reason to believe that his removal is not significantly likely to occur in the reasonably foreseeable future. Gallenkamp Decl. ¶ 17; ECF 1; *see Diouf v. Mukasey*, 542 F.3d 1222, 1233-34 (9th Cir. 2008) (reversing grant of habeas and preliminary injunction because alien was being detained under § 1231(a)(6)). In fact, the stay of removal requested by the Petitioner is what was extending his time in custody. Gallenkamp Decl. ¶ 17; Exh. 11, Doc. 3; *see also Thelemaque v. Ashcroft*, 363 F.Supp.2d 198, 219 (D.Conn. 2005) ("the Court notes at the outset as it had occasion to emphasize recently in another case, that a 'self-inflicted wound cannot be grounds for [a] *Zadvydas* claim.'" and collecting cases); *Plummer v. Ashcroft*, 258 F.Supp.2d 43, 48 (D.Conn. 2003) ("Thus the delay in Plummer's deportation is attributable solely to his efforts to challenge his removal in this Court, and is not unlawful."). Delay of the petitioner's own making, even if it is over the 180 day presumptively reasonable period, does not show that there is no significant likelihood of his removal in the reasonably foreseeable future. *See Kumar v. Gonzales*, 555 F.Supp.2d 1061, 1065 (N.D. Cal. 2008) (denying habeas relief despite detention of over a year). Judge Wilkin of the Northern District of California analyzed a petitioner's detention for nearly a year as follows:

> Although Petitioner has been in ICE custody for nearly a year,[3] longer than the presumptively reasonable period, he has failed to show that there is no significant likelihood of his removal in the reasonably foreseeable future. To the contrary, it is very likely that Petitioner will be removed (or else he will be released) once the Ninth Circuit rules on his petition for judicial review; ICE is in possession of valid travel documents for Petitioner and would have removed him already had it not been for the stay of removal Petitioner obtained from the court of appeals. *Kumar*, 555 F.Supp. 2d at 1065.

The Court then quoted the Ninth Circuit's decision in *Pelich v. I.N.S.*, 329 F.3d 1057, 1060 (9th Cir.

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[6] Even if Petitioner was detained under some other statute, he would still be subject to mandatory detention because of his prior convictions for aggravated felonies. *See Demore v. Kim*, 538 U.S. 510, 518 (2003) (discussing detention of noncitizens convicted of aggravated felonies); Exh. 7 (rap sheet). This lessens his liberty interest.

2003), that, "The reason is self-evident: the detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock." To the extent Petitioner attempts to claim that his detention was unreasonable because he had not yet been removed, he cannot because his appeals and requests for stay are the only procedural hurdles to his removal. Gallenkamp Decl. ¶ 17.

Second, ICE is meeting its obligations under *Zadvydas* in that it has determined that Petitioner's removal is significantly likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Petitioner's petition for review before the Ninth Circuit appears to be mostly briefed, and Petitioner can expect a prompt judicial determination of his citizenship claim. Exh. 11, Doc. 20; *See Carillo-Lozano*, 669 F.Supp.2d at 1078 ("Here, Petitioner will receive a 'prompt' judicial determination of his citizenship claim through the Ninth Circuit's review of his final order of removal."). This Court should have denied the motion for a temporary restraining order without prejudice. *See Shahvaladian v. Garland*, 2025 WL 3692141 at *3 (C.D. Cal. December 16, 2025) (denying motion without prejudice when petition filed within 180 day presumptively reasonable removal period). Therefore, this Court should deny the motion for a preliminary injunction.

4. Petitioner did not request the relief that this Court granted in its temporary restraining order.

Finally, Petitioner did not request immediate unconditional release. ECF 1 at p. 17 (prayer for relief). The appropriate remedy for any such procedural deficiency is not automatic release from custody, but rather an opportunity to remedy the specific procedural deficiency that might be established. Injunctive relief must be *narrowly tailored* to the wrong. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) ("And we note that even when there are deficiencies in individual § 1226(a) proceedings, they may be redressable through means short of major changes to the burden of proof."). Under the case law, statutes, and regulatory scheme, the remedy for any detention beyond the presumptively reasonable 180 days is not unconditional release. "[T]he alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Zadvydas*, 533 U.S. at 699-700; 8 U.S.C. § 1231(a)(3) ("If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General."). Therefore, this Court should dissolve the temporary restraining order ordering the Petitioner's unconditional release.

5. Petitioner has Not Established a Legally Required Basis for Review by a Neutral Adjudicator Prior to Re-Detention

Petitioner did not request an order prohibiting his re-detention. ECF at p. 17. Neither the INA nor the implementing regulations provides Petitioner with a right to a pre-detention hearing before a neutral adjudicator. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4, 241.13. A judicial ruling imposing such a requirement would be at odds with the plain language of 8 C.F.R. § 241.13. It would essentially deprive ICE of its operational discretion and regulatory authority to take such action, and ultimately improperly interfere with the Executive Branch's operations. *See Quoc Chi Hoac v. Becerra*, 2:25-cv-1740 DC, ECF No. 21, p.5 (June 30, 2025); *see also Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022) (in the absence of any such requirement in the text of section 1231(a)(6), detainee not entitled to a bond hearing before an immigration judge). Nor does Due Process require this level of process.

The lack of authority for the relief ordered as item 3 in the temporary restraining order weighs against adding a new pre-detention hearing requirement into the INA. Petitioner's liberty interest is lessened because he is subject to a final removal order. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011) (agreeing with the government that § 1231(a)(6) detainees have a lesser liberty interest because they are closer to actual removal) (abrogated on other grounds); *see also Mathews*, 426 U.S. at 79–80 ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.").

The final factor weighs heavily in favor of Respondents. The government has a strong interest in effectuating a final removal order, particularly when the person subject to removal has a lengthy criminal history. *See Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1208 (9th Cir. 2022). The achievement of this objective warrants not placing additional fiscal and administrative hurdles through process that will provide no additional safeguards. Petitioner's request for a pre-detention hearing essentially seeks a judicially-created stay that would impede execution of a final removal order.

Considering all the factors discussed above, the Court should dissolve the temporary restraining order enjoining and restraining the Respondent from re-arresting or re-detaining Petitioner.

D. <u>Petitioner Does Not Establish Irreparable Harm</u>

Because Petitioner is unlikely to succeed on the merits of his petition, he likewise cannot establish irreparable harm. As discussed above, ICE has exercised its statutory and regulatory authority to revoke Petitioner's release and to detain him. In addition, Petitioner's detention satisfies Due Process and *Zadvydas* because ICE has determined there is a significant likelihood that Petitioner's removal will occur in the reasonably foreseeable future. Petitioner's detention is authorized by the statutes and regulations discussed herein and his detention does not itself satisfy his burden of proving a likelihood of irreparable injury. While the Ninth Circuit has recognized that "[a]n alleged constitutional infringement will often alone constitute irreparable harm," *Goldie's Bookstore, Inc. v. Superior Court* , 739 F.2d 466, 472 (9th Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate "a sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a preliminary injunction." *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir.1991)). Because Petitioner's detention was presumably reasonable, and the delay in his removal was because of the stay caused by his petition for review, Petitioner could not establish irreparable harm, and this factor should weigh against granting injunctive relief.

E. <u>The Balance of Equities and the Public Interest Favors the Government.</u>

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). Petitioner "foreseeably remains *capable* of being removed – even if it has not yet finally been determined that he *should* be removed – and so the government retains an interest in 'assuring [his] presence at removal.'" *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) *quoting Zadvydas*, 533 U.S. at 699. In terms of equities, the Petitioner fraudulently convinced an immigration judge to rule in his favor, which was corrected in reopened proceedings. In the meantime, the Petitioner committed a serious crime involving child sexual abuse, and demonstrated that he was a danger to the community. The government's interest in detaining and removing Petitioner is strong, and should weigh against granting injunctive relief.

III. CONCLUSION

Respondents respectfully request that the Court dismiss Petitioner's writ of habeas corpus for lack of jurisdiction, dissolve the temporary restraining order, and decline to issue a preliminary injunction.

Dated: December 29, 2025

ERIC GRANT
United States Attorney

By: /s/ ROGER YANG
ROGER YANG
Assistant United States Attorney