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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

VIKTOR MAZELIAH, Petitioner, vs. MICHAEL J.D. SMITH, et al., Respondents.	CASE NO. CV26-00053 JAO-WRP RESPONDENTS' RESPONSE TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 1] AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER [ECF No. 7]; DECLARATION OF JAMES DOLD; EXHIBITS "A"–"C"; CERTIFICATE OF SERVICE

RESPONDENTS' RESPONSE TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 1] AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER [ECF No. 7]

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I. INTRODUCTION

The Emergency Petition For Writ of Habeas Corpus; With Emergency Stay of Removal and Request For Temporary Restraining Order ("Petition") [ECF No. 1] and Petitioner's Verified Emergency Petition For Ex-Parte Temporary Restraining Order To Stay His Remvoal Pending His Appeal at the BIA ("TRO Request") [ECF No. 7] requests unwarranted injunctive relief to stay removal of this matter until the Petitioner's appeal to the Board of Immigration Appeals is completed.

This Court lacks jurisdiction over the Petition and TRO Request because this matter arises out of the execution of a final removal order. Moreover, even if this Court had jurisdiction over the Petition, injunctive relief would not be appropriate as Petitioner cannot satisfy the requirements for injunctive relief. This Court should determine that it lacks jurisdiction over the Petition and deny the Petition and the TRO Request.

II. BACKGROUND

Petitioner is a native of and citizen of Israel. Declaration of James Dold ("Dold Dec.") at ¶6. On March 16, 2010, Petitioner entered the United States as a B-2 nonimmigrant visitor with authorization to remain until September 15, 2010. *Id.* at ¶7. On August 25, 2014, Petitioner's status was adjusted to a permanent resident on a conditional basis. *Id.* at ¶8.

On June 22, 2016, Petitioner filed a joint petition (Form I-751) to remove the conditional basis of his permanent resident status with the United States Citizenship and Immigration Services ("USCIS"). *Id.* at ¶9. On April 1, 2021, USCIS terminated Petitioner's conditional permanent resident status because Petitioner failed to appear for a required interview. *Id.* at ¶10.

On May 5, 2021, Petitioner was served a Form I-862, Notice to Appear and placed into removal proceedings under Immigration and Nationality Act ("INA") § 240 in the Honolulu Immigration Court. Petitioner was charged removable pursuant to INA § 237(a)(1)(D)(i). *Id.* at ¶11. Petitioner was taken into custody on January 27, 2026 pursuant to INA § 241(a). *Id.* at ¶¶ 36 and 37.

On May 19, 2021, the Immigration Court held an initial master-calendar hearing for Petitioner and proceedings were continued for a master-calendar hearing on July 28, 2021. *Id.* at ¶13. On May 20, 2021, the Department of Homeland Security ("DHS") submitted evidence, which included Petitioner's permanent resident card and the USCIS Notice of Decision, dated April 1, 2021, denying Petitioner's application to remove the conditional basis of his permanent resident status. *Id.* at ¶14.

On July 28, 2021, the Immigration Court held a second master-calendar hearing for Petitioner and proceedings were continued for an individual hearing on

March 7, 2022. *Id.* at ¶15. On February 17, 2022, DHS filed a position statement of Petitioner's eligibility for relief through a joint I-751 petition. *Id.* at ¶16.

On March 1, 2022, Petitioner, through counsel, filed a motion to continue the individual hearing or administratively close proceedings because he filed an I-751 waiver with USCIS on February 28, 2022. *Id.* at ¶17, 18. On March 2, 2022, DHS filed a non-opposition to Petitioner's motion to continue or administratively close proceedings. *Id.* at ¶18. On March 4, 2022, the Immigration Court granted Petitioner's motion to continue. *Id.* at ¶19.

On January 23, 2023, the Immigration Court issued a Notice of In-Person Hearing, scheduling Petitioner for a master-calendar hearing on March 8, 2023. *Id.* at ¶20. On March 8, 2023, the Immigration Court held a third master-calendar hearing for Petitioner. Proceedings were continued for a master-calendar hearing on July 26, 2023. *Id.* at ¶21.

On March 30, 2023, the Immigration Court issued a Notice of Intent to Take Case Off of the Court's Calendar because Petitioner had a pending application or petition with USCIS. *Id.* at ¶22. On April 28, 2023, Petitioner, through counsel, requested in writing that the immigration court maintain the current court calendar. *Id.* at ¶23.

On July 26, 2023, the Immigration Court held a fourth master-calendar hearing for Petitioner, and proceedings were continued for an individual hearing on

January 17, 2025 and Petitioner was provided with a written Notice of In-Person Hearing. Petitioner's individual hearing was scheduled for January 17, 2025. *Id.* at ¶¶24–25.

On January 17, 2025, the Immigration Judge issued an Order (*in absentia* order), stating that Petitioner failed to appear at the hearing and ordered that Petitioner be removed to Israel. *Id.* at ¶26. On February 6, 2025, Petitioner filed his Motion to Reconsider with the Immigration Court. *Id.* at ¶27. On February 10, 2025, the Immigration Judge denied the Motion To Reconsider. *Id.* at ¶28.

On February 11, 2025, Petitioner filed an appeal to the Board of Immigration Appeals (BIA) of the denial of Petitioner's Motion To Reconsider. ECF No. 18 at page 20 (Petitioner's own timeline). *Id.* at ¶29.

On February 18, 2025, the Immigration Judge rejected Petitioner's attempt to file a Motion To Reopen. *Id.* at ¶26; Exs. A and B; ECF No. 18 at page 12. There is no evidence that Petitioner attempted to re-file another Motion to Reopen before the Immigration Court prior to the expiration of the 180-day period following the entry of the *in absentia* removal order. On February 18, 2025, the Immigration Court issued a notice stating that the record of proceeding is forwarded to the BIA for consideration of the appeal of the Immigration Judge decision on a motion to reopen (as noted above, there is no evidence that a Motion To Reopen was accepted for filing). Dold Dec. at ¶33, Ex. "C".

III. THIS COURT LACKS JURISDICTION OVER THIS MATTER

A. Petitioner is Subject To A Final Order Of Removal

Petitioner is subject to a final order of removal because he failed to properly file a Motion to Reopen within 180 days after the entry of the *in absentia* order. An alien who, after written notice required under INA section 239(a)(1) or (2), has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed if DHS establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable. INA § 240(b)(5)(A).

An order of removal entered *in absentia* may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances. INA § 240(b)(5)(C)(i); INA § 240(c)(7)(C)(iii); 8 C.F.R. § 1003.23(b)(4)(ii). The 180-day deadline is subject to equitable tolling. *Fajardo v. I.N.S.*, 300 F.3d 1018 (9th Cir. 2002).

Exceptional circumstances refer to circumstances beyond the control of the alien, such as battery or extreme cruelty to the alien or the child or parent of the alien, serious illness of the alien, or serious, but not including less compelling circumstances. INA § 240(e)(1). Ineffective assistance of counsel also qualifies as an exceptional circumstance. *Reyes v. Ashcroft*, 358 F.3d 592, 596 (9th Cir. 2004).

An order of removal entered *in absentia* may be rescinded upon a motion to reopen filed at any time upon the alien's demonstration of lack of notice in accordance with INA section 239(a)(1) or (2). INA § 240(b)(5)(C)(i); 8 C.F.R. § 1003.23(b)(4)(ii).

In contrast, a motion to reconsider must state the reasons for the motion by specifying the errors of law or fact in the previous order and must be filed within 30 days of the date of entry of the final administrative order of removal. INA § 240(c)(6)(B)–(C); 8 C.F.R. § 1003.23(b)(1), (2).

Cui v. Garland, 13 F.4th 991 (9th Cir. 2021) is instructive. In *Cui*, the Immigration Judge ordered the petitioner to be removed *in absentia* after the petitioner and her attorney did not attend the removal hearing. *Id.* at 993–994. The petitioner's second attorney then incorrectly filed an appeal of the *in absentia* order to the BIA. *Id.* The petitioner's attorney attempted to file a motion to reopen but the immigration court clerk rejected and did not file the motion to reopen because of the pending appeal and the presenting attorney not being the counsel of record in the immigration court. *Id.*

The petitioner's counsel did not attempt to rectify his error or to refile the motion to reopen within the "statutorily allotted" 180 days to challenge the *in absentia* order. *Id.* citing 8 U.S.C. § 1229a(b)(5)(C)(i). The BIA returned the appeal to the immigration court for a lack of jurisdiction and noted that the appropriate route

to challenge the *in absentia* removal order was to file a motion to reopen before the immigration judge. *Id.* at 994.

The Ninth Circuit, in finding that *in absentia* order was final, noted that the motion to reopen was not filed but rejected by the immigration court and the petitioner did not attempt to refile the motion to reopen to properly challenge the *in absentia* removal order. *Id.* at 997.

This case is on point with *Cui.* Here, similar to *Cui,* the record is clear that Petitioner attempted to file a Motion to Reopen that was rejected by the Immigration Court.[1] Following the rejection, Petitioner possessed approximately five months to correct the filing deficiency but failed to file a Motion To Reopen with the Immigration Court. Thus, similar to *Cui*, since Petitioner's Motion To Reopen was never properly filed, the *in absentia* removal order in this case is "final."

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[1] Petitioner needed to file a Motion to Reopen, not a Motion To Reconsider, to initiate the process to rescind the *in absentia* removal order. Curiously, on February 16, 2026, Petitioner filed a motion to rescind the *in absentia* removal order with the BIA. Dold Dec. at ¶40. Although certain documents reference that the BIA is considering a Motion To Reopen on appeal, it is undisputed that Petitioner only made one attempt to file a Motion To Reopen before the Immigration Court and this attempt was rejected. *Id.* at ¶32.

Petitioner also incorrectly argues that *in absentia* removal order was inappropriate because the I-751 waiver was pending. ECF No. 1 at paragraph 25. Any challenge to the *in absentia* removal order needed to be in the form of a Motion To Reopen and Petitioner waived the right to challenge the *in absentia* removal order by not filing a Motion to Reopen in the above-referenced 180-day period.

Any argument made by Petitioner that the BIA is considering an appeal of the Immigration Court's rejection of the Petitioner's attempt to file a Motion To Reopen must be disregarded. As noted above, Petitioner's appeal of the Motion For Reconsideration occurred before Petitioner's Motion To Reopen was rejected. On February 11, 2025, Petitioner appealed the Immigration Judge's denial of his motion to reconsider while the rejection of Petitioner's Motion To Reopen occurred seven days later, on February 18, 2025. Dold Dec. at ¶¶29–32.

Petitioner's reliance on *Bonilla v. Hermosillo*, No. 2:25-CV-02196, 2025 WL 3237854 (W.D. Wash. Nov. 19, 2025), is also misplaced. In *Bonilla*, the immigration judge issued a removal order *in absentia*. *Id.* at *1. The petitioner and his family then filed a Motion To Reopen 32 days later which the IJ denied. *Id.* at *1–2. The petitioner appealed the matter to the BIA. *Id.* The petitioner claimed that he was subject to removal without a final removal order as his matter was pending before the BIA. *Id.* at 2. The district court noted that the *in absentia* removal order was not final because the matter was properly before the BIA. *Id.* at *3. Thus, the district court noted that it possessed jurisdiction over the petitioner's habeas claim. *Id.* at *3–4.

This case is distinguishable from *Bonilla* as Petitioner did not file a motion to reopen in this case and there is no appeal to the BIA regarding the denial of a Motion To Reopen. As noted above, Petitioner's motion to reopen was rejected by the

Immigration Court and Petitioner failed to take further action to correct the defect within 180 days following the entry of the *in absentia* removal order. Thus, *Bonilla* does not apply to this case because the *in absentia* removal order is a "final" order.

B. 8 U.S.C. § 1252(g) bars review of Petitioner's Claims

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute *removal orders* against any alien." 8 U.S.C. § 1252(g). The scope of § 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings. *See, e.g.*, *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take him into custody and to detain him during removal proceedings"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest [petitioner], clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."). The act of arresting—and in turn, detaining—an alien to serve a charging document and initiate removal proceedings is an "action . . . to commence proceedings" that this Court lacks jurisdiction to review. *See, e.g.*, *id.*; *Tazu v. Att'y Gen. United States*, 975 F.3d 292,

298–299 (3d Cir. 2020) ("Tazu also challenges the Government's re-detaining him for prompt removal. . .While this claim does not challenge the Attorney General's *decision* to execute his removal order, it does attack the *action* taken to execute that order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.").

As § 1252(g) prohibits judicial review of "any cause or claim" that arises from the commencement of removal proceedings or the execution of a removal order, this provision applies to constitutional as well as statutory claims. *Tazu* at 296–298 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–604 (6th Cir. 2010) (noting that "a natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution" and finding additional support for the court's interpretation from the remainder of the statute). Indeed, "[w]hile the statute creates an exception for 'constitutional claim or questions of law,' jurisdiction to review such claims is vested exclusively in the courts of appeals and can be exercised only after the alien has exhausted administrative remedies." *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (internal citations omitted); *see also id.* ("Accordingly, the district court lacked jurisdiction to review Ajlani's constitutional challenges to his removal proceedings, and it would be premature for this court to do so now."); 8 U.S.C. § 1252(a)(2)(D).

The Secretary of Homeland Security's decision to commence and execute a removal order, including the decision to detain and remove an alien, squarely falls within this jurisdictional bar. *See Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022); *Tazu*, 975 F.3d at 297; *Xiaoyuan Ma v. Holder*, 860 F. Supp. 2d 1048, 1059 (N.D. Cal. 2012); *Ramirez Ayala v. Santacruz*, Case No. 2:25-cv-11496-ODW (PVCX), 2025 WL 3485738, at *2 (C.D. Cal. December 4, 2025). As such, judicial review of the Petitioner's request to stay his removal or release him from custody is not warranted as 8 U.S.C. § 1252(g) bars review of Petitioner's claim[s].

C. 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) Mandates That The Petition Needs to Be Adjudicated Via A Petition For Review Before The Appropriate Court of Appeals

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–580 (2020)). Moreover, § 1252(a)(5) provides

that a petition for review is the exclusive means for judicial review of immigration proceedings.

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *Xiao Ji Chen v. U.S. Dep't of Just.*, 434 F.3d 144, 151 n.3 (2d Cir. 2006).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted);

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts

of jurisdiction to review both direct and indirect challenges to removal orders. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–299 (2018).

Here, if Petitioner properly challenged the decision of the Immigration Judge to issue an *in absentia* order of removal, he would have been required to present his claims before the appropriate Court of Appeals because he challenges the government's decision to issue an *in absentia* order of removal, commence removal proceedings and execute the *in absentia* removal order.

D. Due Process Does Not Require That Respondents Be Prohibited from Arresting Petitioner Pending A Removal Order Or Removing Petitioner.

It is well-established that individuals in removal proceedings are entitled to due process of law. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022). Detention during removal proceedings is "a constitutionally valid aspect of the deportation process." *Id.* at 1206 (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)). To determine whether due process has been afforded, courts apply the three-part *Mathews* test and evaluate: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural

requirement would entail. *Rodriguez Diaz*, 53 F.4th at 1207 (citing *Mathews v. Eldridge*, 424 U.S. 319, 334–335 (1976)).

The first factor favors Respondents because Petitioner's liberty interest in his supervised release is low. From the outset, his supervision was in place only until he could be removed from the United States. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011), *abrogated on other grounds*. Petitioner's diminished interest in this context weighs against imposing the hearing requirement or release.

The second *Mathews* factor also favors Respondents. In the context of an alien with a final removal order, the risk of erroneous deprivation is relatively low. Here, Petitioner is undisputedly subject to a final order of removal, Petitioner has no pending applications that would prevent his removal, § 1231(a)(6) undisputedly authorizes Petitioner's detention in order to effectuate his removal order.

The final factor weighs decisively in Respondents' favor. The government has a strong interest in preventing aliens from remaining in the United States in violation of our law and, to this end, effectuating a final order of removal as expeditiously as possible. *See Rodriguez Diaz*, 53 F.4th at 1208. District courts cannot provide injunctive relief to forestall removal via habeas cases and the courts should not do indirectly what it is prohibited from doing directly. *See Rauda*, 55 F.4th 773. On balance, the *Mathews* factors weigh decisively in Respondents' favor.

//

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF

Temporary restraining orders and preliminary injunctions serve fundamentally different purposes. "'The purpose of a temporary restraining order to preserve an existing situation in status quo until the court has an opportunity to pass upon the merits of the demand for a preliminary injunction.'" *All. for Wild Rockies v. Higgins*, 690 F. Supp. 3d 1177, 1185 (D. Idaho 2023) (quoting *W. Watersheds Project v. Bernhardt*, 391 F. Supp. 3d 1002, 1008–1009 (D. Or. 2019)). The critical difference between the two is the duration of relief. Preliminary injunctions enjoin certain actions throughout the course of the litigation, while temporary restraining orders "serv[e] their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer." *Id.* at 1186 (quoting *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 438–439 (1974)). And further, injunctive relief must be narrowly tailored and "no more burdensome to the defendant than necessary to provide complete relief" to the moving party. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021) (citation omitted).

Though the purposes are different, the standards for evaluating whether to issue temporary restraining orders and preliminary injunctions are substantially identical. *O'Hailpin v. Hawaiian Airlines, Inc.*, 583 F. Supp. 3d 1294, 1301 (D.

Haw. 2022) (citing *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017)). "In either case, the relief is an extraordinary remedy never awarded as of right." *Id.* (internal quotation and citation omitted). The party seeking relief must show (1) a likelihood of success on the merits; (2) a likelihood of suffering 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). And "[w]hen the government is a party, these last two factors merge." *All. for Wild Rockies*, 690 F. Supp. 3d at 1185 (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The movant must carry its burden of persuasion by a "clear showing" of the four required elements. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). A preliminary injunction or TRO may also issue upon a showing that there are "serious questions going to the merits" – a lesser showing than likelihood of success on the merits – if the "balance of hardships [. . .] tips sharply in the plaintiff's favor," and the other two *Winter* factors (irreparable harm and public interest) are satisfied. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–1135 (9th Cir. 2011).

A. Petitioner Does Not Have Any Likelihood of Success on the Merits.

Petitioner is not entitled to injunctive relief, just as he is not entitled to habeas relief. "The first *Winter* factor, likelihood of success, is a threshold inquiry and the

most important factor in any motion for a preliminary injunction." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (internal citation marks and citation omitted). As noted above, this Court lacks jurisdiction over Petitioner's claim because the *in absentia* removal order is final as Petitioner failed to file a Motion to Reopen within 180 days of the entry of the *in absentia* removal order.

B. The Balance of Equities and Public Interest Factors Favors Respondents.

The final two factors – considered jointly where the government is a party – look to the equities involved and the public interest in the issuance of an injunction. Here, both factors weigh against granting injunctive relief.

Respondents have a strong interest in uniformly applying immigration policy as part of a comprehensive and unified system. *See*, *e.g.*, *East Bay Sanctuary Covenant*, 993 F.3d at 681; *Kahn v. I.N.S.*, 36 F.3d 1412, 1415 (9th Cir. 1994). Likewise, the government has an interest in pursuing immigration policies it chooses. *See New York v. United States Dep't of Homeland Sec.*, 969 F.3d 42, 87 (2d Cir. 2020).

An injunction in this case would harm the federal government's ability to rely on its congressionally mandated authority to fulfill its statutory mission of enforcing immigration law. And the practical effect of Petitioner's position should not be ignored. If Petitioner's interpretation of habeas corpus is adopted, every individual

subject to deportation, regardless of whether they are in custody, would be able to seek an order preventing immigration officials from executing lawful arrest warrants.

This case does not present such unique circumstances to warrant the relief sought. The third and fourth factors weigh in favor of the Respondents, and the request for injunctive relief should be denied.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition and the TRO Request.

DATED: March 6, 2026, at Honolulu, Hawaii.

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CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

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