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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

OTIS NICHOLAS FFRIEND,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 3:26-cv-03942-WHO

RESPONDENTS' MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER

NOTICE OF MOTION

On May 2, 2026, the Court issued the temporary restraining order ("TRO") ex parte, without allowing Respondents the opportunity to be heard. *See* Dkt. No. 5. Accordingly, pursuant to Federal Rule of Civil Procedure 65(b)(4), Respondents Sergio Albarran, Todd Lyons, Markwayne Mullin, and Todd Blanche ("Respondents") move to dissolve the TRO that was granted ex parte. Under the same rule, Respondents respectfully request that a decision on dissolving the TRO be made prior to Petitioner's next scheduled check-in with Immigration and Customs Enforcement ("ICE") on May 15, 2026.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is supported by the concurrently filed Declaration of Acting Unit Chief Elvia Wilcox with an accompanying Exhibit. As set forth in the Points and Authorities in support of this Motion, Petitioner is not likely to succeed on the merits because this Court lacks jurisdiction over Petitioners' claim and because removing Petitioner to St. Kitts does not violate due process. Respondents request that this motion to dissolve also be construed as the Court ordered "response to Ffriend's motion." Dkt. No. 5 at 8.

WHEREFORE, Respondents pray that this Court grant their request to dissolve the temporary restraining order.

Dated: May 8, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ William Skewes-Cox
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I. INTRODUCTION

On May 1, 2026, Respondents acted to execute the removal order against Petitioner. Accordingly, Respondents took Petitioner into custody for a limited period of detention inherently necessary for the execution of the removal order. Petitioner is subject to a judicially final order of removal. Respondents have arranged for removal to St. Kitts, which has given diplomatic assurances that Petitioner will not be tortured following his removal to St. Kitts. Respondents have arranged a flight to take Petitioner to St. Kitts on May 19, 2026. There is no remaining logistical or diplomatic obstacle to his removal. The only thing preventing his removal on May 19 is an order in this case.

The Court should dissolve the temporary restraining order ("TRO"), deny the preliminary injunction, and decline to order any restriction on Petitioner's removal on May 19. Under several provisions of the Immigration and Nationality Act, this Court lacks jurisdiction to hear Petitioner's claim. Under Ninth Circuit precedent and 8 U.S.C. § 1252(g), this Court lacks jurisdiction to hear any claim arising from Respondents' decision or action to execute a removal order. Moreover, to the extent that Petitioner attempts to attack the judicially final removal order, he can only do so through a petition for review with the circuit court – but not through this habeas petition.

Even on the merits, Petitioner's claim fails. His due process arguments are unavailing because as an alien who entered the United States without admission, he has only the right to the process regarding detention afforded to him under the immigration laws. Because St. Kitts gave diplomatic assurances, Petitioner has no further fear claim he can raise. The Supreme Court has twice stayed district court orders finding due process violations with third country removals, including those involving diplomatic assurances. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025); 145 S. Ct. 2627 (2025). The First Circuit has also stayed a district court decision on the merits finding due process violations with the government's third country removal process. *D.V.D. v. Dep't of Homeland Sec,* Case No. 26-1212 (1st Cir. March 16, 2026) (order granting emergency motion for stay pending appeal). Lastly, there is no constitutional requirement that constrains the government from executing a removal order absent an additional finding of flight risk or danger.

II. FACTUAL BACKGROUND

Petitioner illegally entered the United States in 2022. *See* Dkt. No. 4 at 6. He was not admitted into the United States. *See* Dkt. No. 4-3 at 2. On November 13, 2024, the Immigration Judge ordered Petitioner removed from the United States. *See id.* at 4. Petitioner's removal to his home country of Jamaica was withheld because the Immigration Judge granted him protection under the Convention Against Torture. *See id.* at 2; Dkt. No. 4 at 6. Petitioner waived appeal of removal order. *See* Dkt. No. 4-3 at 5.

On December 12, 2025, St. Kitts and Nevis signed a Third Country Removal agreement with the United States. Declaration of Acting Unit Chief Elvia Wilcox ("Wilcox Decl."), ¶ 4. As part of the Third Country Removal agreement, St. Kitts & Nevis provided diplomatic assurances that the aliens removed from the United States pursuant to this agreement will not be subjected to persecution or torture. *Id.* ¶ 5. On January 13, 2026, the Department of State determined that the diplomatic assurances were credible. *Id.*

ICE has received notification that the Petitioner's name was accepted by the Government of St. Kitts & Nevis as per our prior elevation request pursuant to the Third County Removal agreement that the Department of State negotiated and signed with the Government of St. Kitts & Nevis. *Id.* ¶ 6.

Given the Petitioner's acceptance, ICE intends to remove the Petitioner to St. Kitts & Nevis on or around May 19, 2026. *Id.* ¶ 7. The Petitioner's acceptance by St. Kitts & Nevis and placement on the manifest for this charter serves as the travel document in the Petitioner's removal. *Id.* ICE will follow the March 30th, 2025 memorandum Guidance Regarding Third Country Removals to effectuate the Petitioner's removal. *Id.* ¶ 8.

On May 1, 2026, ICE detained Petitioner to execute the final order of removal. Dkt. No. 4 at 4. Petitioner was informed by ICE that he would be removed to St. Kitts. *Id.*

III. LEGAL STANDARD

A. Federal Rule of Civil Procedure Rule 65(b)(4)

Federal Rule of Civil Procedure 65(b)(4) states: "Motion to Dissolve. On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion

as promptly as justice requires."

B. The Standard For Preliminary Relief

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action." *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Courts have also denied preliminary relief where the relief the plaintiff seeks is the same relief sought on the merits, because "[j]udgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Mendez v. ICE*, No. 23-cv-829, 2023 WL 2604585 at *3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

IV. ARGUMENT

Petitioner merits neither a TRO nor a preliminary injunction. Petitioner is unlikely to succeed on the merits of his claim. This Court lacks jurisdiction to hear his claim. Even if this Court did have jurisdiction, Petitioner's claims fail on the merits because the procedures for third country removals satisfy both due process and 8 U.S.C. § 1231(b)(3). Because Petitioner cannot establish a likelihood of success of his claim, the preliminary injunction should not issue. *See Garcia v. Google, Inc.,* 786 F.3d 733, 740 (9th Cir. 2015) ("Because it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three *Winter* elements.") (internal quotation marks and citations omitted). Even still, the other *Winter* elements favor dissovling the TRO and denying the preliminary injunction.

A. Petitioner Is Unlikely To Prevail On The Merits Of His Claim

1. This Court Lacks Jurisdiction To Hear Petitioner's Claim

Various provisions of the Immigration and Nationality Act strip this Court of jurisdiction over Petitioner's claim.

(i) 8 U.S.C. § 1252(g) Strips This Court of Subject-Matter Jurisdiction Over Petitioner's Claim

Section 1252(g) squarely bars review of Petitioner's claims. As the Eleventh Circuit has aptly noted, courts lack "jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order." *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021); *see also Rauda v. Jennings,* 55 F.4th 773, 778 (9th Cir. 2022) ("We agree with our sister circuits. No matter how [Petitioner] frames it, his challenge is to the Attorney General's exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review.").

Petitioner's challenge to his removal to a third country is a claim "arising from" the Government's "action" to "execute removal orders against an[] alien." 8 U.S.C. §1252(g). Petitioner has a removal order that can be executed to a third country, because 8 U.S.C. § 1231(b)(2) and 8 C.F.R. §1240.12(d) authorize removal to third countries even when not expressly specified in the removal order.

Numerous circuits, including the Ninth, have relied on § 1252(g) as a bar to claims when an alien pressing a constitutional claim seeks to pause removal while he seeks other immigration relief. *See, e.g.,*

Rauda, 55 F.4th at 778; *Camarena*, 988 F.3d at 1274; *E.F.L. v. Prim*, 986 F.3d at 964-65; *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020); *Hamama v. Adduci*, 912 F.3d 869, 874-77 (6th Cir. 2018), *cert. denied*, 141 S. Ct. 188 (2020); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017); *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001); *Tsering v. U.S. Imm. & Customs Enf't.*, 403 F. App'x. 339, 342-43 (10th Cir. 2010). In *Rauda* and *Hamama*, the alien plaintiffs sought to "enforce" protections against torture to prevent their removal while they litigated fear claims that allegedly could not have been raised earlier. *Rauda*, 55 F.4th at 776 (describing how the plaintiff moved to reopen his proceedings to pursue his CAT claim); *Hamama*, 912 F.3d at 873 (describing how the plaintiffs sought a stay while they asserted fear claims). And in *Tazu*, *Camarena*, and *E.F.L.*, the plaintiffs sought to "enforce" a regulation or statute that they claimed created a procedural due process right to remain in the United States temporarily. *Camarena*, 988 F.3d at 1272-73; *E.F.L.*, 986 F.3d at 962; *Tazu*, 975 F.3d at 295-96. This Court should adhere to precedent and follow the Ninth Circuit, and other courts of appeal around the country, to find that Petitioner's challenge to the execution of his removal order is barred by § 1252(g).

(ii) Plaintiffs' Claims Are Barred By The Foreign Affairs Reform And Restructuring Act.

Independently, this Court lacks jurisdiction, pursuant to the Foreign Affairs Reform and Restructuring Act ("FARRA") § 2242(d), as to Petitioner's claims under the CAT. That provision implements Article 3 of CAT and provides that "[n]otwithstanding any other provision of law, and except as provided [by regulation], no court shall have jurisdiction to review the regulations adopted to implement this section[.]" FARRA §2242(d). Likewise, FARRA confirms that "nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under [CAT] or this section, or any other determination made with respect to the application of [CAT] . . . except as part of the review of a final order of removal." *Id.* (emphasis added); *see also* 8 U.S.C. §1252(a)(4) ("a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of any cause or claim under [CAT].").

Petitioner's claims, to the extent that they challenge DHS's existing procedures for certain CAT claims, both concern the "application" of CAT and is a "claim raised under [CAT]." Thus, this Court

lacks jurisdiction.

Section 2242(d) does not apply solely to a singular determination respecting an application for protection under CAT. Instead, it broadly limits judicial review of both "claims raised under" CAT and "any other determination made with respect to the application of" the United States' "policy not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." FARRA §2242(a), (d). The references to "the application" of the CAT "policy" make clear that FARRA's limitation on review encompasses challenges to general agency practices and policies and is not limited to individual applications. The jurisdictional bar is so all-encompassing that Congress needed to expressly except individual claims brought in a petition for review. FARRA §2242(d). Accordingly, §2242(d) clearly deprives this court of jurisdiction to review Petitioner's CAT-related claims, which are a challenge to Respondents' application of the CAT "policy" in the third-country removal context and are not raised in a petition for review.

(iii) To The Extent Plaintiffs' Claims Are Reviewable At All, They Are Reviewable Only In A Petition For Review.

Petitioner's claims likewise fail to escape 8 U.S.C. § 1252(a)(5) and (b)(9), which bar federal district courts from reviewing any suit "arising from an[] action taken or proceeding brought to remove an alien," 8 U.S.C. §1252(b)(9) – and instead establish a petition for review of a removal order with courts of appeals as the "sole and exclusive" forum for such a claim. *Id.* §1252(a)(5).

To the extent Petitioner's claims are reviewable by a court, it would be in a petition for review. 8 U.S.C. §§1252(a)(4), (a)(5), (b)(9). This does not mean that no further legal remedies are available to Petitioner. Congress has provided aliens with a motion-to-reopen process should CAT claims arise after immigration proceedings conclude. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return."). Petitioner may wish that these procedures were even more generous. But that policy objection cannot vest the district court with jurisdiction in the teeth of Congress's contrary decision. It is not a license to ignore the plain text of § 1252.

2. Petitioner's Due Process Claim Fails On The Merits

Even if this Court has jurisdiction over Petitioner's claims, Respondents' execution of the removal order against Petitioner does not violate his due process rights. Petitioner has a final order of removal and already received the procedural protections of removal proceedings. The immigration laws of the United States undoubtedly grant Respondents the ability to execute judicially final orders of removal. There is no support or justification for grafting on the requirement of an additional danger or flight risk finding before the government can execute a judicially final order of removal.

(i) Unadmitted aliens such as Petitioner do not have a right to more process than Congress provides

As an alien who was not admitted, Petitioner lacks a right to process beyond what Congress has provided. The Supreme Court has repeatedly held that "the due process rights of an alien seeking initial entry" are no greater than "[w]hatever the procedure[s] authorized by Congress." *Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 139 (2020*)* (citation omitted). For aliens who have never been admitted, such as Petitioner, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (emphasis added); *accord Thuraissigiam*, 591 U.S. at 138-40.

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all unadmitted aliens "are treated for due process purposes as if stopped at the border." *Id.* at 139 (citation omitted). The Supreme Court has applied the entry fiction to aliens notwithstanding their claims to having "entered" and developed significant ties to this country. *See, e.g., Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (mentally disabled girl paroled into relatives' care for nine years must be "regarded as stopped at the boundary line"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214-15 (1953) (alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). With these cases in mind, it follows that an unadmitted alien is "treated as if stopped at the border." *Mezei*, 345 U.S. at 215; *see also Thuraissigiam*, 591 U.S. at 140 (holding that aliens who enter the United States illegally "cannot be said to have 'effected an entry'" and remain "on the threshold").

Petitioner's removal to St. Kitts complies with the process provided by Congress. *See* 8 U.S.C.

§§ 1231(b)(2) & (3). Therefore, because Petitioner has not "effected an entry" and "remain[s] on the threshold," he has received all the due process to which he is entitled. *See id.*

(ii) Additional Process Is Not Necessary Given The Diplomatic Assurances From St. Kitts That The Executive Branch Has Deemed Credible.

Because St. Kitts has given diplomatic assurances, Petitioner has no right to an additional opportunity to raise a fear claim. Wilcox Decl. ¶ 5. The State Department has determined that those assurances are credible. *Id.* Neither immigration judges nor courts can second-guess those credibility determinations that are part of the Executive's foreign relations prerogatives. A finding to the contrary would be an "unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 116 (2013). But that is precisely what would happen if Petitioner's relief is granted. The DHS Guidance provides that an alien may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." Wilcox Decl. at Exhibit A at 2. If the State Department finds that country's assurances credible, "the alien may be removed without the need for further procedures." *Id.* at 2-3.

The Constitution requires nothing further. The Supreme Court has already held that when the Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren,* 553 U.S. 674, 702 (2008) ("The Judiciary is not suited to second-guess such determinations—determinations that would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area"). Indeed, "[u]nder *Munaf* … the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee." *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009). *Munaf* "applies here a fortiori: That case involved transfer of American citizens, whereas this case involves transfer of alien detainees with no constitutional or statutory right to enter the United States." *Id.* at 517-18 (Kavanaugh, J., concurring). When the Executive decides, via diplomatic assurances, an alien will not be tortured abroad, courts may not "second-guess [that] assessment.". *Id.* at 517 (citation omitted); *see also Munaf*, 553 U.S. at 703 n.6.

(iii) The Execution Of A Judicially Final Order Of Removal Does Not Require A Finding Of Flight Risk Or Danger

Petitioner seeks to graft on the requirement of an additional flight risk or danger finding prior to the execution of Petitioner's removal order. There is no support for this relief in the immigration laws of the United States. Respondents are undoubtably empowered to execute removal orders, and a brief detention is inherent in the actions of deportation and removal. There are no constitutional issues arising from the detention of aliens ordered removed for "a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner's removal is imminently foreseeable. It has an appointed date, eleven days from today.

(iv) The *Mathews v. Eldridge* Factors Favor The Respondents

Petitioner lacks a liberty interest because he illegally entered the United States without admission. Moreover, he has been ordered removed from the United States by an Immigration Judge and that order of removal is judicially final. He was released on an order of supervision, but that order of supervision was always understood to last until he could be removed from the United States, which he now can.

The burden to the government of holding a pre-deprivation hearing is significant. There are currently several months' delays in scheduling and holding a pre-deprivation hearing, and that does not include the additional time waiting a final decision from the immigration court. *See Guillermo M.R. v. Kaiser*, 3:25-cv-5436-RFL, Dkt. No. 39 (N.D. Cal. Jun. 29, 2025) ("[O]n August 12, 2025, the Immigration Court granted the motion of Respondent Department of Homeland…to schedule a pre-deprivation bond hearing for Petitioner. The hearing was scheduled for January 20, 2026.").

Moreover, even if Petitioner had a liberty interest, there is no risk of erroneous deprivation. There is no question that Petitioner's order of removal is judicially final. Though Petitioner was previously released on an order of supervision, there is now a designated country of removal, a travel document, and a flight arranged for Petitioner to be removed. A brief period of detention is inherently necessary to execute a removal order. There is thus no risk of erroneous deprivation because there is no error in removing him.

B. The Remaining *Winters* Factors Support Denying A Preliminary Injunction

Respondents face irreparable harm from Petitioner's requested relief. Any time the government is enjoined by a court from effectuating statutes enacted by Congress, it suffers a form of irreparable harm. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). Petitioner, however, suffers no cognizable harm from the execution of the legally firm removal order against him. There is no constitutional injury from lawful removal. Petitioner is scheduled to be removed to St. Kitts on May 19, 2026, and the only remaining obstacle to that removal is this habeas petition. Thus, Petitioner at most faces a few days in government custody before he is lawfully removed pursuant to the judicially final removal order.

As for the balance of equities and the public interest factors of the TRO inquiry, which merge when the government is the opposing party, Respondents have a weighty interest in removing Petitioner. As the Supreme Court has emphasized, "[t]here is always a public interest in prompt execution of removal orders." *Nken*, 556 U.S. at 436. The relief Petitioner seeks unjustifiability thwarts the prompt execution of the removal order against him.

Respondents will face significant delays in detaining Petitioner if they must demonstrate that any detention incident to removal is necessary to prevent flight or danger to the community prior to executing the removal order. This delay will likely last months at least. *See Guillermo M.R. v. Kaiser*, 3:25-cv-5436-RFL, Dkt. No. 39 (N.D. Cal. Jun. 29, 2025). Thus, these factors strongly weigh in favor of Respondents.

V. CONCLUSION

Respondents thus respectfully request that the Court grant the motion to dissolve the TRO, deny the preliminary injunction, and permit Respondents to remove Petitioner to St. Kitts on May 19, 2026.

Dated: May 8, 2026

Respectfully submitted,

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