CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
WILLIAM SKEWES-COX (DCBN 1780431)
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7066
FAX: (415) 436-6748
William.skewes-cox@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JUAN G.S., Petitioner, v. SERGIO ALBARRAN, et al., Respondents.	Case No. 3:26-cv-06803-TLT **RESPONDENTS' RESPONSE TO ORDER GRANTING EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER (DKT. NO. 7)** Hon. Trina L. Thompson

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I. INTRODUCTION

U.S. Immigration and Customs Enforcement (ICE) has the legal authority to detain Petitioner. Petitioner is subject to a final order of removal from the United States because he unlawfully reentered the United States after being ordered removed previously. After reinstatement of his prior removal order, an Immigration Judge granted Petitioner withholding of removal to Honduras. Withholding of removal *to Honduras* does not prevent Petitioner's removal to other countries.

Petitioner brought this habeas petition to prevent his detention without a pre-deprivation hearing. However, there is no pre-deprivation requirement under the immigration laws of the United States. Because he was previously ordered removed, Petitioner is inadmissible. Accordingly, Respondents may detain Petitioner without providing a bond hearing, at least until his detention becomes impermissibly "prolonged." Because Petitioner has not yet been detained, he cannot claim that he is subject to prolonged detention and, once detained, his removal would otherwise be presumptively reasonably foreseeable for 180 days.

Petitioner's constitutional claims are without merit. Congress has created a comprehensive scheme governing the detention of aliens pending removal, and the Department of Homeland Security (DHS) has promulgated detailed regulations to implement that scheme, all of which the Supreme Court has consistently upheld. Petitioner lacks a constitutionally protected liberty interest and, regardless, even if he had one, he is not entitled to burdensome extra-statutory process. As an alien present without admission, he has no right to due process beyond what is contained in the statutes and regulations.

Lastly, the equitable factors at this preliminary stage favor Respondents. As the Supreme Court has recognized, there is a strong public interest in the prompt execution of removal orders, including the longstanding and still valid removal order entered against Petitioner that has remained unexecuted for *thirteen years*.

II. FACTUAL BACKGROUND

Petitioner has been twice removed from the United States. Dkt. No. 1 at 8-9. Nevertheless, he subsequently illegally reentered – his third illegal entry – and has remained in the United States ever since despite remaining subject to an order of removal dating back to 2009. *Id.* at 8.

He has three criminal convictions. He has a criminal conviction under 8 U.S.C. § 1325 for illegal

entry into the United States. *Id.* at 9. He also has criminal convictions for Cal. P.C. 245(a)(1) and V.C. 23152(a) (DUI). *Id.* at 8.

On May 23, 2022, an immigration judge granted Petitioner withholding of removal to Honduras under 8 U.S.C. § 1231(b). *Id.* at 10. Petitioner has been subject to an order of supervision since 2013. *Id.* at 9.

III. LEGAL STANDARDS

A. Detention of Aliens Under 8 U.S.C. § 1231

The detention of an alien[1] following reinstatement of a prior order of removal is governed by 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021). Section 1231(a)(2) provides that the government "shall detain" the alien for a 90-day "removal period," the commencement of which can be triggered by various events in the alien's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter, the alien "may be detained beyond the [90-day] removal period" if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6).

Section 1231(a) does not provide for a bond hearing for the alien to challenge their detention. *See Guzman Chavez*, 594 U.S. at 526. Rather, aliens subject to final orders of removal can request review of their detention after the expiration of the 90-day removal period "where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Additionally, the Supreme Court has recognized that detention of up to six months to effectuate the removal of a alien is "presumptively reasonable" and constitutionally valid, though longer detention may

[1] This brief uses the term of art "alien." Under the Immigration and Nationality Act, the term "alien" is defined as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). "Alien" is used by the Supreme Court in its opinions. *See, e.g.*, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (passim). The alternative term "noncitizen" sweeps too broadly. To say, for example, that "noncitizens are subject to removal" suggests that nationals of the United States who are not citizens, such as American Samoans, are subject to immigration enforcement when they are not. The term "alien," as defined, avoid this conflation. Out of respect to nationals of the United States, and for the sake of precision, this brief declines to use the alternative term "noncitizen." *See Avilez v. Garland*, 48 F.4th 915, 933 (9th Cir. 2022) (J. Bea, Concurring) ("Our federal immigration statutes concern themselves with aliens. This word is not a pejorative nor an insult.").

require additional justification. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

IV. ARGUMENT

Respondents have not detained Petitioner. But even still, Petitioner's detention would not violate the statutes, regulations, or constitution. Petitioner is subject to a reinstated order of removal and has had his order of removal to Honduras withheld. He remains subject to removal to other countries. *See* 8 C.F.R. § 1240.12(d). He is inadmissible due to his prior removal order. Thus, Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6). Moreover, Petitioner lacks a constitutionally protected liberty interest, which means he has no extra-statutory right to a pre-deprivation hearing. Petitioner's substantive and procedural due process claims fail on the merits.

A. Petitioner Is Subject To Detention Under 8 U.S.C. § 1231(a)(6).

The plain language of 8 U.S.C. § 1231(a)(6) grants the Department of Homeland Security the discretion to detain Petitioner if, among other things, he is "inadmissible," (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6). Because Petitioner is subject to a reinstated order of removal, he is inadmissible. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). Accordingly, Petitioner is subject to detention under § 1231(a)(6)

B. The Regulations Likewise Permit Respondents to Detain Petitioner.

Congress authorized the Department of Homeland Security to promulgate regulations for the ongoing supervision of aliens, like Petitioner, who are not removed within 90 days of their removal order becoming final. *See* 8 U.S.C. § 1231(a)(3). Those regulations specifically provide that the Department of Homeland Security may redetain a previously released alien in various circumstances, including, inter alia, if the purposes of release have been served. *See* 8 C.F.R. § 241.4(l).

These regulations would apply here. The Department of Homeland Security did not previously detain Petitioner because DHS had no plans to remove him. However, that prior decision does not preclude DHS from detaining Petitioner to remove him now, i.e. once the purposes of Petitioner's prior order of supervision have been served. Upon the completion of withholding-only proceedings, Petitioner remained subject to removal to a third country. *See* 8 U.S.C. § 1231(b); 8 C.F.R. § 1240.12(d). The grant of withholding of removal *has no effect* on his underlying removability; instead, that form of protection

from removal only determines to which country he can ultimately be removed. *See* 8 C.F.R. § 1208.31(g)(2)(i); 8 C.F.R. § 1208.16. His redetention is therefore authorized by statute and regulation. *See* 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.4(l). A finding to the contrary would lead to the absurd result that Congress failed to provide the Department of Homeland Security with the authority to redetain an alien who could now be removed. Congress plainly authorized detention in these circumstances.

C. Petitioner's Detention Would Not Violate Substantive Due Process.

Because Petitioner was found inadmissible by the Immigration Judge, there is no viable argument that his detention violates a claimed substantive due process right. The Supreme Court has recognized that detention of up to six months to effectuate the removal of a alien is "presumptively reasonable" and constitutionally valid, though longer detention may require additional justification. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has also held that aliens in Petitioner's procedural posture, i.e. those subject to reinstated removal orders in withholding-only proceedings, are subject to detention under § 1231 and "are not entitled to a bond hearing while they pursue withholding of removal." *Guzman Chavez*, 594 U.S. at 526; *see also, e.g.*, *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022) (rejecting argument that § 1231(a)(6) "require[s] an initial bond hearing" "at the outset of detention"). Thus, "[T]he Supreme Court has ruled multiple times in multiple contexts that…1231(a) [is] facially constitutional without a bond hearing for at least a presumptive six-month period following detention." *Giorges v. Kaiser*, No. 25-CV-07683-NW, 2025 WL 2898967, at *6 (N.D. Cal. Oct. 10, 2025).

Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an IJ of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United*

States, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.").

True, aliens held under § 1231 may be able to obtain review of their detention after six months, including to avoid the constitutional problems with "prolonged" detention, but even then, only when their removal in no longer reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 ("After this 6- month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing."). But Petitioner does not and cannot argue that his detention has become prolonged because he has not even been detained. *See Guerra-Castro v. Parra*, No. 1:25-CV-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("It is only after the six-month period that the Court would consider Petitioner's evidence as to whether 'there is no significant likelihood of his removal from the United States in the reasonably foreseeable future.'"); *Thai v. Hyde*, No. 25-11499-NMG, 2025 WL 1655489, at *3 (D. Mass. 2025) (finding six-month *Zadvydas* period had not yet accrued, and Petitioner's previous ICE detention and years of release under an Order of Supervision did not count towards the detention period).

D. Petitioner's Detention Would Not Violate Procedural Due Process.

1. Petitioner cannot claim any greater due process rights than what is afforded by statute.

As an alien physically present in the United States without having been admitted, Petitioner is treated for constitutional purposes as if stopped at the border. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139-140 (2020). As an alien stopped at the border, his due process rights are coextensive with the process afforded to him under the immigration laws, which do not require a pre-deprivation hearing before his redetention. Though the petitioner in *Thuraissigiam* sought admission rather than release from custody, this fact does not limit the constitutional principle that aliens not admitted cannot claim procedural rights beyond what is afforded to them under the immigration laws.

The Supreme Court has long applied this so-called "entry fiction" such that all unadmitted aliens "are treated for due process purposes as if stopped at the border." *Thuraissigiam,* 591 U.S 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 has not established the necessary "connections" under *Thuraissigiam* to grant him a constitutional right to extra-statutory process. In support of its recognition of greater due process rights afforded to aliens with "established connections," *Thuraissigiam* cites to *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892). That case states specifically that:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, *nor even been admitted into the country pursuant to law*, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.

Id. (emphasis added). *Nishimura Ekiu* is thus explicit that as regards those aliens who have not "been admitted into the country pursuant to law…the decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law." *Id.* Thus, Petitioner is not the kind of alien the Supreme Court referred to in *Thuraissigiam* when it referred to aliens with "established connections in this country." Regardless of what Petitioner may have done with his life after illegally re-entering the United States, that he entered without having been admitted means that he has no constitutional entitlement to process beyond the statutes.

2. Petitioner lacks a constitutionally protected liberty interest.

Petitioner mistakenly analogizes his claimed liberty interest in remaining out of immigration custody following his release to the recognized liberty interest of U.S. citizens facing redetention. *See*

Dkt. No. 2 at 22 (citing to *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release)); *id.* (citing to *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated")).

The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522 (citing to *Reno v. Flores*, 507 U. S. at 305-306; *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Mathew v. Diaz*, 426 U.S. 67, 79-80 (1976); *United States v. Verdugo–Urquidez*, 494 U.S. 259, 273 (1990)). The Ninth Circuit has also acknowledged that it has "not previously held that cases involving heightened burdens of proof for the deprivation of liberty interests of U.S. citizens apply coextensively to alien detainees who have been subject to § 1226(a) and its procedures throughout the period of their detention." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022); *see also Miranda* v. *Garland*, 34 F.4th 338, 359 & n.9 (9th Cir. 2022) (agreeing that the Supreme Court's civil commitment cases are inapposite because they "involved detention of United States citizens whereas § 1226(a) involves detention of aliens awaiting removal hearings").

Thus, the applicable line of authority is the Supreme Court's immigration cases, most pertinently *Zadvydas*. Though *Zadvydas* is silent on the issue of redetention, it does permit detention without a hearing for six months. Petitioner is not even in detention, let alone been in detention for six months.

To the extent Petitioner relies on *Singh v. Holder,* 638 F.3d 1196, 1204 (9th Cir. 2011), for the claim that due process requires that the government justify re-detention of Petitioner by clear and convincing evidence that he poses a flight risk or danger, Dkt. No. 1 at 29, the Ninth Circuit has cast doubt on whether *Singh* remains good law. *See Rodriguez-Diaz*, 53 F.4th at 1202 n.4.

3. Petitioner's due process claims fails under *Mathews v. Eldridge.*

Petitioner asserts that his procedural due process claim is governed by *Mathews v. Eldridge*, 424 U.S. 319 (1976). The government does not concede that *Mathews* applies here, given "the unique constitutional treatment of detained aliens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The Supreme Court has never held that *Mathews* applies in the immigration detention context.

Nevertheless, if the Court were to apply *Mathews*, it would consider three factors: the plaintiff's private interest, the risk of erroneous deprivation without additional procedures, and the government's interest. These factors weigh against the additional process requested here.

(i) Petitioner's history and status reduce his liberty interest.

First, Petitioner's liberty interest is reduced by the fact that he is an alien subject to a final order of removal. *See Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022); *see also Rodriguez Diaz* 53 F.4th at 1206-08. That is especially true in light of Petitioner's particular circumstances. Petitioner has unlawfully entered the country multiple times. He is subject to a final order of removal. He has multiple criminal convictions. Though Petitioner's removal to Honduras was withheld, Petitioner remains removable to other countries. *See* 8 U.S.C. § 1231(b). Since he illegally reentered, which is a felony under 8 U.S.C. § 1326, his presence in the United States has always been without a legal basis. All of these factors reduce Petitioner's liberty interest. *See Rodriguez Diaz*, 53 F.4th at 1206-08.

Petitioner's release subject to an order of supervision does not heighten his liberty interest. Petitioner has never been granted any form of lawful status in the United States; his order of supervision has always remained subject to revocation so that the government could effectuate his removal. Petitioner's conditional release does not somehow increase the strength of his liberty interest now. *See Uc Encarnacion*, 2022 WL 9496434, at *3. This case is also fundamentally unlike cases such as *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny, where U.S. citizens were released from custody in other contexts, such as post-sentence parole: "The recognized liberty interests of U.S. citizens and aliens are not coextensive." *Rodriguez Diaz*, 53 F.4th at 1206. The government recognizes that any form of detention will implicate an individual's liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But those reasons do not change the fact that Petitioner's immigration history reduces his liberty interest.

(ii) The risk of erroneous deprivation is minimal.

Second, the risk of erroneous deprivation of Petitioner's liberty here is minimal. *See Rodriguez Diaz*, 53 F.4th at 1209; *Uc Encarnacion*, 2022 WL 9496434, at *4. As the Supreme Court has long upheld, section § 1231 authorizes detention to effectuate an individual's removal. *See, e.g.*, *Guzman*

Chavez, 594 U.S. at 526; *see also Zadvydas*, 533 U.S. at 701. And "existing agency procedures sufficiently protected [Petitioner's] liberty interest and mitigated the risk of erroneous deprivation." *Rodriguez Diaz*, 53 F.4th at 1209; *see also* 8 C.F.R. §§ 241.13(d)(1) & (j). "[D]etention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also, e.g.*, *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. Petitioner is inadmissible. Thus, because 8 U.S.C. § 1231(a)(6) controls, there is no risk of an erroneous deprivation of liberty. And even in detention, Petitioner would have the opportunity to seek review of that detention if it extended more than six months and his removal at that point was not reasonably foreseeable.

(iii) The government has a strong interest in detention pending removal.

Turning to the third *Mathews* factor, the Ninth Circuit has held that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The public interest lies squarely in detaining an individual subject to removal in the near term. *See Rodriguez Diaz*, 53 F.4th at 1208-09. "There is always a public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. at 436. Petitioner ignores the public interest in application of immigration laws that the Supreme Court has long upheld. *See, e.g.*, *Demore*, 538 U.S. at 523; *see also Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws). And the Supreme Court has recognized that "aliens who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order." *Guzman Chavez*, 594 U.S. at 544; *see also Rodriguez Diaz*, 53 F.4th at 1208-09 & n.8 (noting that "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent").

Petitioner's request for a pre-deprivation hearing would impose administrative and resource burdens on the government that would frustrate its ability to take congressionally authorized detention and removal actions. Congress empowered the Executive Branch to detain aliens ordered removed without providing them a pre-detention bond hearing. *See* 8 U.S.C. § 1231(a); 8 C.F.R. 241.4(l). Every extra hearing before an immigration judge adds further congestion to an already backlogged immigration-court system. The government has a significant interest in avoiding these extra-regulatory

burdens. *See Uc Encarnacion*, 2022 WL 9496434, at *4-5 (additional bond hearing would "thwart the Congressional design").

In short, the three *Mathews* factors weigh decidedly against granting Petitioner the additional, pre-detention hearing he now requests.

E. The Equitable Factors Favor Respondents.

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 longstanding removal order against him. There is no constitutional injury from lawful removal or lawful detention. Petitioner was already ordered removed from this country and prohibited from returning. His repeated violation of the immigration laws of the United States diminishes any harm he claims resulting from the enforcement of the immigration laws.

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 face potentially 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

For the foregoing reasons, the Court should deny Petitioner's requested relief and dismiss the habeas petition.

Dated: July 13, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ William Skewes-Cox
WILLIAM SKEWES-COX
Special Assistant United States Attorney

Attorneys for Respondents