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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 ISMEL ARLEY FRANCISCO,
12 

13 Petitioner,

14 v.

15 WARDEN, *et al.*,

16 Respondents.
17

No. 1:26-CV-05243-TLN-SCR

OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND PETITION FOR
WRIT OF HABEAS CORPUS

18 This petition should be dismissed or stayed for the reasons stated in Respondents' previously
19 filed motion to dismiss or stay the petition, that is currently pending before this Court. ECF 9.
20 Petitioner has another petition for habeas corpus involving the same claims pending the United States
21 District Court for the Northern District of Texas. That petition was filed before the instant petition and
22 the district court in the Northern District of Texas issued an order on June 2, 2026, in response to
23 Petitioner's request, finding it retains jurisdiction over the petition even though Petitioner is now
24 detained in the Eastern District of California. ECF 9-2.

25 **1. Petitioner is Subject to Mandatory Detention**

26 As to the merits of the instant petition, Petitioner entered the United States illegally. Petitioner is
27 thus an "applicant for admission" who is subject to mandatory detention by ICE under 8 U.S.C.

28 § 1225(b)(2). *Joaquin Herrera Avila v. Bondi*, No. 25-3741 (8th Cir. March 25, 2026); *Buenrostro-*

1 *Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026); *see also Cortes Alonzo*
2 *v. Noem*, 1:25-cv-01519-WBS-SCR at Dkt. 14 (E.D. Cal. Nov. 17, 2025).

3 An “alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been
4 admitted,’ is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)
5 (quoting 8 U.S.C. § 1225(a)(1)). As an applicant for admission, petitioner is subject to mandatory
6 detention and thus ineligible for a bond hearing. Petitioner does not possess a right to freedom from
7 immigration detention in any form other than the form provided by Congress. *Shaughnessy v. United*
8 *States ex rel. Mezei*, 345 U.S. 206, 212 (1953), *reaffirmed in DHS v. Thuraissigiam*, 591 U.S. 103, 139
9 (2020). The Court should deny the petition for writ of habeas corpus because there is no such liberty
10 interest, and petitioner’s detention is mandated by statute.

11 **2. The Court Should Limit the Scope of Any Relief to the Issues Presently Before the**
12 **Court.**

13 To the extent this Court rejects Respondents’ arguments and orders relief in the form of a
14 permanent injunction, as it has done in other cases, the relief should not apply to the circumstance in
15 which Petitioner becomes subject to a final order of removal, an issue which is not presently before this
16 Court. Once Petitioner is subject to a final order of removal, his detention is mandatory for the first 90
17 days, known as the removal period, in order to effectuate removal. *See* 8 U.S.C. § 1231(a). The law
18 does not require any additional findings, such as a significant likelihood of removal in the reasonably
19 foreseeable future, to justify detention during this period.

20 **A. 8 U.S.C. § 1231 governs post-removal-order detention**

21 Section 1231(a) governs “[d]etention, release, and removal of aliens ordered removed[.]” 8
22 U.S.C. § 1231(a). The statute’s first subsection establishes a 90-day “removal period” during which it
23 mandates action by the Attorney General: “when an alien is ordered removed, the Attorney General
24 shall remove the alien from the United States within” that removal period.¹ 8 U.S.C. § 1231(a)(1)(A).

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27 ¹ Although 8 U.S.C. § 1231(a) refers to the “Attorney General” as having responsibility for
28 detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135,
2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security (“DHS”).
See also 6 U.S.C. § 251; *Hernandez v. Ashcroft*, 345 F.3d 824, 828 n.2 (9th Cir. 2003).

1 The statute also mandates detention of the person covered by final removal order: “During the
2 removal period, the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2)(A). The Supreme
3 Court has confirmed this straightforward reading: “After entry of a final removal order and during the
4 90-day removal period . . . , aliens must be held in custody.” *Zadvydas v. Davis*, 533 U.S. 678, 683
5 (2001) (citing 8 U.S.C. § 1231(a)(2)); *see also Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–79
6 (2022) (“*Arteaga-Martinez*”) (explaining that § 1231(a) requires detention during the removal period
7 and permits it after the removal period expires); *Johnson v. Guzman Chavez*, 594 U.S. 523, 528 (2021)
8 (“*Guzman-Chavez*”) (“During the removal period, detention is mandatory.”). Thus, § 1231(a) governs
9 after a final order of removal issues and mandates detention. That inquiry only becomes applicable if
10 the noncitizen remains detained at some point after the removal period when detention has become
11 unreasonable. *See Zadvydas*, 533 U.S. at 701 (finding six months of detention to be presumptively
12 reasonable).

13 **B. There is no liberty interest for individuals detained during the removal**
14 **period.**

15 No constitutionally protected liberty interest exists for those subject to mandatory detention
16 under Section 1231(a)(2) during the removal period. “The period of detention under § 1231(a)(2) . . .
17 passes constitutional scrutiny.” *Kholesouvan v. Morones*, 386 F.3d 1298, 1301 (9th Cir. 2004)
18 (affirming dismissal of habeas petitions filed during the removal period); *Singh*, 2026 WL 320410, at *3
19 (citing *Kholesouvan*, 386 F.3d at 1301). There is accordingly no constitutionally protected liberty
20 interest for individuals detained during the removal period. *Aguilar Garcia v. Kaiser*, No. 3:25-CV-
21 05070-JSC, 2025 WL 2998169, at *5 (N.D. Cal. Oct. 24, 2025). Therefore, a court should not grant
22 release or a bond hearing on due process grounds when § 1231(a)(2) supplies the ground for detention
23 and an individual is within the removal period. This is especially so where the removal period has not
24 yet come into play, and the statutory structure does all the work needed at this point.

25 Emphasizing the nature of the removal period, the INA establishes a comprehensive framework
26 governing the detention and release of aliens during and after removal proceedings. These phases are
27 commonly referred to as “pre-order” (before the entry of a final order of removal) and “post-order”
28 (after the entry of a final order of removal). *Compare* 8 U.S.C. § 1225(b) (mandating pre-order

1 detention) and 8 U.S.C. § 1226 (authorizing pre-order detention) *with id.* § 1231(a) (authorizing post-
2 order detention). Once a final order of removal is entered, the alien enters the “removal period.” *Id.*
3 § 1231(a)(1). During this 90-day period, Congress has directed that the Secretary of Homeland Security
4 “shall remove the alien from the United States.” *Id.* § 1231(a)(1)(A). ICE is charged with effectuating
5 removal. *See id.* To ensure the alien’s presence for removal and to protect the community while
6 removal is carried out, Congress further mandated: “During the removal period, the [Secretary of
7 Homeland Security] *shall* detain the alien.” 8 U.S.C. § 1231(a)(2) (*italics added*).

8 Accordingly, if a petitioner becomes subject to an administratively final order of removal, he
9 enters a 90-day period of mandatory detention. Any order of this Court should not conflict with or place
10 limitations upon this clear statutory mandate and the longstanding precedent upholding it by imposing
11 preconditions—specifically a pre-deprivation hearing with notice where certain findings must be made
12 prior to detention.

13 Further, once the petitioners become subject to a final order of removal, there is no evidence that
14 the Respondents are likely to violate the law. Indeed, the law requires such detention. Accordingly,
15 under that circumstance, there is no reason for the injunctive relief granted here. “Under general equity
16 principles, an injunction issues only if there is a showing that the defendant has violated, or imminently
17 will violate, some provision of statutory or common law, and that there is a cognizable danger of
18 recurrent violation.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 766, n.3 (1994) (citation and
19 internal quotation marks omitted); *see also Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193,
20 225 (2009) (Thomas, J., concurring in part and dissenting in part) (“There can be no remedy without a
21 wrong.”).

22 Accordingly, any order from the Court should not enjoin or restrict Respondents ability to re-
23 detain Petitioner if, and when, he becomes subject to a final order of removal. *See D.G.M. v. Chestnut*,
24 No. 1:26-cv-369-TLN-CSK and *TUDH v. Chestnut*, et al., No. 1:26-cv-539-TLN-JDP narrowing scope
25 of permanent injunctive relief.

26 Moreover, the lawfulness of Petitioner’s detention once he is subject to a final order of removal
27 is not currently before the Court and thus, granting relief that applies to this possible future scenario
28 would raise ripeness concerns. Article III of the Constitution empowers district courts “to adjudicate

1 only 'live cases or controversies,' not 'to issue advisory opinions [or] to declare rights in hypothetical
2 cases.'" *Clark v. City of Seattle*, 899 F.3d 802, 808 (9th Cir. 2018) (quoting *Thomas v. Anchorage*
3 *Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000)) (modification in original). The Ninth
4 Circuit has counseled that "[r]ipeness is peculiarly a question of timing, designed to prevent the courts,
5 through avoidance of premature adjudication, from entangling themselves in abstract disagreements."
6 *Id.* (citation and internal quotation marks omitted); *see also id.* at 809 ("For a case to be ripe, it must
7 present issues that are definite and concrete, not hypothetical or abstract.") (citation and internal
8 quotation marks omitted). Accordingly, the Court should not issue relief that, even if inadvertently,
9 declares rights of the petitioner that apply in a hypothetical circumstance, presuming the existence of a
10 final order of removal that does not yet exist and is not assured to come into existence. Thus, ripeness
11 further favors a limited scope of relief.

12 CONCLUSION

13 Because this is a duplicate petition it should be denied or stayed. If the merits are considered, the
14 motion for a TRO and the petition should be denied because Petitioner is subject to mandatory
15 detention. If the motion and/or petition are granted over Respondents' objection, the scope of relief
16 should be tailored to only the issues presented in the petition and should not apply if Petitioner becomes
17 subject to a final order of removal.

18 Dated: July 14, 2026

Respectfully submitted,

19 ERIC GRANT
20 United States Attorney

21 By: /s/ Shelley D. Weger
SHELLEY D. WEGER
22 Assistant United States Attorney

23 Attorneys for Respondents
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers. She also certifies that on July 14, 2026, a copy of the OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PETITION FOR WRIT OF HABEAS CORPUS was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California.

Addressee: **Ismel Arley Francisco**


GOLDEN STATE ANNEX
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/s/ Shelley D. Weger
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