CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
KENNETH BRAKEBILL (CABN 196696)
Chief, Civil Division
MICHAEL J. STARRETT (NYBN 5444575)
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7073
Fax: (415) 436-7000
Michael.starrett@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ALI KANOUNO BABAE,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 3:26-cv-11836-WHO

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

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I. INTRODUCTION

Petitioner, a citizen and national of Libya, was admitted to the United States on May 2, 2015, on a F-1 student visa, which was terminated on or about February 28, 2020. Petitioner failed to depart and he remained in the United States. He has been living in this country without lawful status since his F-1 status was terminated in February 2020. Under the Immigration and Naturalization Act ("INA"), the Department of Homeland Security ("DHS") therefore was entitled to initiate removal proceedings against Petitioner and detain him under 8 U.S.C. § 1226(a) pending a decision on whether he is to be removed. DHS exercised its discretion to do precisely that on October 13, 2026.

Despite his lack of lawful status, Petitioner argues that he was unlawfully detained without a pre-deprivation hearing. But the law does not provide for or require a *pre-deprivation* hearing. Petitioner failed to depart the United States when required after being admitted to the United States and therefore 8 U.S.C. § 1226(a) governs his detention. Petitioner is entitled to the ample process afforded to all section 1226(a) detainees pursuant to a statutory and regulatory scheme that has long been considered sufficient to protect the interests of noncitizens. Petitioner's habeas claim is not cognizable because he has not exhausted his administrative remedies through the "substantial procedural protections" available under Section 1226(a). *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Petitioner cannot be heard to complain that he has been denied an opportunity to be heard before a neutral adjudicator when an individualized bond hearing is available to him upon request. Petitioner should not be granted the relief sought here before being required to seek that relief in his administrative proceedings.

II. FACTUAL BACKGROUND

Petitioner Ali Kanouno Babae ("Petitioner") is a native and citizen of Libya. Dkt. No. 1 ¶ 8. On or about May 2, 2015, Petitioner was admitted to the United States on an F-1 student visa. Dkt. No. 3-2 at 2. Petitioner was authorized to remain in the United States until 2017, when his F-1 visa expired. *Id.* While in the United States, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal ("I-589"), with U.S. Citizenship and Immigration Services ("USCIS") in 2017.

On October 13, 2026, ICE arrested Petitioner at the USCIS office in San Francsico, CA. Dkt. No.

1 ¶ 31. On the same day, ICE placed Petitioner into removal proceedings as a nonimmigrant who, after admission, failed to maintain or comply with the conditions of the nonimmigrant status under which he was admitted, and charged him with removability under INA 237(a)(1)(C)(i) [8 U.S.C. § 1227(a)(1)(C)(i)]. Declaration of Michael J. Starrett ("Starrett Dec.") Ex. 1. Petitioner was detained pursuant to 8 U.S.C. § 1226(a).

On that same day, Petitioner filed a petition for writ of habeas corpus and *ex parte* motion for temporary restraining order ("TRO") seeking, among other relief, immediate release from custody. Dkt. Nos. 1, 3. On October 14, 2026, this Court (the Araceli Martínez-Olguín presiding) granted the request for a TRO, ordering Petitioner's immediate release and return back to the Northen District, and ordering Respondents to show cause as to why a preliminary injunction shouldn't issue. Dkt. No. 4. On that same day, ICE released Petitioner in San Francisco pursuant to the TRO. Dkt. No. 8.

III. LEGAL STANDARD

A. The Preliminary Injunction Standard

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," as Petitioner seeks here. *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).

B. Immigration Detention Pending Removal Proceedings Under 8 U.S.C. § 1226(a)

Congress enacted a multi-layered statute that provides for the civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. ICE's authority to detain individuals who were previously lawfully present in the country but are now in removal proceedings (such as a nonimmigrant who overstayed his visa) is generally governed by 8 U.S.C. § 1226. *Jennings*, 583 U.S. at 288. The default rule, Section 1226(a), "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Id.* at 306 (quoting Section 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Every individual apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306(citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). "Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final." *Rodriguez Diaz*, 53 F.4th at 1197. "The detainee may be represented by counsel and can submit evidence in support of his claims." *Id.* Bond hearings are separate and apart from, and form no part of, an individual's removal hearings. 8 C.F.R. § 1003.19(d).

The individual may appeal the IJ's custody redetermination to the Board of Immigration Appeals

("BIA"). 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Further, an alien who remains detained pursuant to Section 1226(a) after the initial bond hearing may request that the IJ conduct another custody redetermination whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). If dissatisfied with the outcome of any subsequent hearing, an alien may appeal that decision to the BIA as well. *See Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

IV. ARGUMENT

A. Petitioner Fails to Meet the High Bar for Mandatory Injunctive Relief Because He Has Not Identified Any Due Process Violation

Because Petitioner initially entered this country lawfully (before overstaying his permitted time and falling into unlawful status), he is subject to the discretionary detention under 8 U.S.C. § 1226(a) while his removal proceedings are pending.

1. Section 1226(a) Provides Procedural Protections That Satisfy Due Process

"Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions." *Rodriguez Diaz*, 53 F.4th at 1202; *see also Rivas Lopez, v. Andrews.*, No. 26-cv-6138, 2026 WL 2416013, at *2 (E.D. Cal. Aug. 18, 2026). This statute provides "numerous levels of review, each offering [the detainee] the opportunity to be heard by a neutral decisionmaker," which ensure that "the risk of erroneous deprivation" is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1209-10. In *Rodriguez Diaz*, the Ninth Circuit concluded that these "procedures satisfy due process, both facially and as applied to Rodriguez Diaz." *Rodriguez Diaz*, 53 F.4th at 1213;

Numerous courts throughout this district routinely find that noncitizens subject to detention under § 1226(a), like Petitioner, have no due process right to a pre-deprivation hearing. *See Carreno Ortiz v. Albarran*, No. 3:26-cv-8708-WHO, Dkt. No. 10 (N.D. Cal., Aug. 28, 2026) ("As an individual who has overstayed her visa and absent any other circumstances, Ms. Carreno Ortiz is subject to arrest under section 1226(a). As long as the government complies with all the procedural requirements within that statute, including honoring a request for a detention hearing, I cannot say that her initial arrest and detention is a violation of due process."); *Njonjo v. Albarran*, No. 26-cv-2188, 2026 WL 716771, at *3

(N.D. Cal. Mar. 13, 2026) ("In light of the explicit holding from *Rodriguez Diaz* that the [§ 1226(a)] post-deprivation procedures satisfied the strictures of due process, the Court is unable to adopt Njonjo's position [that he is owed a pre-deprivation hearing]"); *Nemiro v. Albarran*, No. 26-cv-7853, Dkt. No. 9 (N.D. Cal. Aug. 6, 2026) ("The predetention hearing cases Nemiro cited are distinguishable because they involved noncitizens whom the government previously 'determined not to be a danger to the community', a factor not present with Nemiro, who simply overstayed his O-1 visa. . . . Consequently, the extraordinary relief of a TRO is not warranted.") (citation omitted); *Valencia Zapata v. Kaiser,* 801 F. Supp. 3d 919, 938 (N.D. Cal. 2025) ("the statutory protections of § 1226(a) require only a prompt post-deprivation hearing"); *Salcedo Aceros v. Kaiser*, No. 25-cv-6924, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025) ("the Section 1226 framework typically provides for a post-detention, rather than pre-deprivation, bond hearings. If Section 1226 and its regulations are followed, this provides for sufficient process, as detentions will only be made upon an initial DHS determination that an individual is a flight risk or poses a danger to society.").

Here, ICE detained Petitioner pursuant to 8 U.S.C. § 1226(a). The next step is a custody redetermination hearing before a neutral adjudicator. 8 C.F.R. § 236.1(d)(1). That procedure remains available to him. Petitioner cannot be heard to assert a constitutional infirmity when the law already provides for the very mechanism that he asks the Court to require—a lawful and individualized custody determination.

Petitioner has not established an event in his immigration history that would give rise to a constitutionally protected liberty interest. Because Petitioner lacks a constitutionally protected liberty interest, the test from *Mathews* does not apply. However, even under the *Mathews* test, Petitioner's detention under 8 U.S.C. § 1226(a) would satisfy the requirements of due process.

In *Rodriguez Diaz*, the Ninth Circuit considered the constitutional adequacy of the procedures in § 1226(a) under the balancing test set forth in *Mathews*. *See* 53 F.4th at 1207–10. The Ninth Circuit also noted that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206. As previously mentioned, Petitioner does not accrue a constitutionally protected liberty from the *lack* of a detention. However, even assuming *arguendo* that he did have a private interest that weighed in his favor, the second and third factors weigh

in the government's favor.

The second *Mathews* factor is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards". 424 U.S. at 335. As described above, section 1226(a) provides "numerous levels of review, each offering [the detainee] the opportunity to be heard by a neutral decisionmaker," which ensure that "the risk of erroneous deprivation" is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1209-10. As such, consistent with *Rodriguez Diaz*, "the existing agency procedures sufficiently protected [Petitioner]'s liberty interest and mitigate[] the risk of erroneous deprivation", so this factor weighs in the governments favor. *Id.* at 1209.

As to the third *Mathews* factor, "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 v. Kim*, 538 U.S. 510, 518 (2003). This factor "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982).

Petitioner alleges that he is "neither a flight risk nor a danger to the community." Dkt. No. 1 ¶ 43. If this is accurate, then he would have no problem establishing it by a preponderance of the evidence before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Rodriguez Diaz,* 53 F.4th at 1197. However, that is a decision that Congress specifically authorized immigration judges to make and should not be summarily usurped by this Court. *See* 8 U.S.C. § 1226(e) ("No court may set aside any action or decision by the Attorney General[1] under this section regarding the detention of any alien"); *see also De La Garza v. Albarran*, No. 25-cv-10305, 2025 WL 3485157, at *6 (N.D. Cal. Dec. 4, 2025) ("empowering the district court to hold the detention hearing, rather than an immigration judge, under these circumstances would also likely run counter to § 1226(e). . . Thus, this Court would not have the authority to review the immigration judge's determination whether Petitioner was a danger to the

[1] Under the Homeland Security Act of 2002, any reference to the Attorney General concerning a function involving the enforcement of immigration laws was deemed to refer to the Secretary of Homeland Security. *See* 6 U.S.C. §§ 202(3), 251, 557; *see also Nielsen v. Preap*, 586 U.S. 392, 397 n.2, (2019) ("We replace 'Attorney General' with 'Secretary' because Congress has empowered the Secretary to enforce the Immigration and Nationality Act, . . . though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.").

community or flight risk, but Petitioner would have the Court wrest this decision from the immigration judge and make the determination itself.").

2. Petitioner Has Failed To Exhaust His Administrative Remedies

This Court should require Petitioner to avail himself of the substantial procedural protections of Section 1226(a) before seeking habeas relief in a federal district court. Respondents do not contest that Petitioner is subject to detention under 8 U.S.C. § 1226(a) and thus entitled to a bond hearing before an IJ. Petitioner has not alleged any reason why an IJ would deny his request for a bond hearing. Nor has Petitioner requested a bond redetermination hearing from an IJ. 8 C.F.R. § 236.1(d)(1). And even if he were to disagree with an IJ's future bond decision, he would be able administratively appeal the decision to the BIA. Therefore, Petitioner has several layers of process available to him prior to seeking this Court's intervention. And as explained above, Petitioner's arrest and detention did not violate Petitioner's due process rights, and so the agency would be in the best position to decide the issue, as it has done countless times before. *See Immigration Court Bond Hearings and Related Case Decisions*, TRAC Immigration, https://tracreports.org/phptools/immigration/bond/ (last visited Sep. 9, 2026) (58,790 bond hearings have been held in immigration court in fiscal year 2026, through July 2026).

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.* Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonard*, 646 F.3d at 1160.

"The *Puga* factors weigh in favor of requiring exhaustion here." *Rivas Lopez*, 2026 WL 2416013, at *2. As such, the Court should not allow Petitioner to move forward with this litigation without first exhausting his administrative remedies. *See Coke v. Scott*, No. 25-cv-694, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), *report and recommendation adopted*, 2025 WL 2107736 (W.D. Wash. July 28, 2025). As in *Coke*, all of the elements that favor the exhaustion requirement are present here. First, Petitioner seeks release from detention, which "requires consideration of numerous facts which should be developed for presentation and then weighed by an IJ in the first instance." *Coke*, 2025 WL 2108711, at *5. The BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Francisco Cortez v. Nielsen*, No. 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Second, "a waiver of prudential exhaustion would tend to encourage detainees to deliberately bypass the administrative scheme which contemplates a bond determination made by an IJ rather than the Court." *Coke*, 2025 WL 2108711, at *5. And third, exhaustion would not be futile because "an IJ has not yet been given a chance to address whether Petitioner should be released pending a final determination of removal. The agency should thus be afforded the opportunity to address bail in the first instance." *Id.*

Additionally, in his request for preliminary relief, Petitioner has not argued why his failure to exhaust should be excused. *See generally* Dkt. No. 3. Where the *Puga* factors weigh in favor of prudential exhaustion, courts may waive the exhaustion requirement when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). "The party moving the court to waive prudential exhaustion requirements bears the burden of demonstrating that at least one of these *Laing* factors applies." *Chavez v. Noem*, 801 F. Supp. 3d 1133, 1139 (S.D. Cal. 2025). In his habeas petition, Petitioner claims "exhaustion is not required because it would be futile, and Petitioner will 'suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim.'" Dkt. No. 1 ¶ 13 (quoting *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992)). Petitioner does not explain why exhaustion would be futile or what harm would occur. Additionally, as discussed in great detail above, there are significant statutory

procedures that provide Petitioner a forum to raise his claims. *See* 8 U.S.C. § 1226(a).

Accordingly, the Petition should be dismissed to the extent Petitioner seeks a bond hearing before a neutral adjudicator because Petitioner has failed to exhaust his administrative remedies. *See Rivas Lopez*, 2026 WL 2416013, at *2 ("The Court further finds that the petition is premature as Petitioner has failed to exhaust his administrative remedies by appealing his § 1226(a) bond determination to the BIA."); *Qian v. Janecka*, No. 26-cv-4453, 2026 WL 2533148, at *2 (C.D. Cal. Aug. 27, 2026) (dismissing substantive due process claim for failure to exhaust by requesting a bond hearing); *Geronimo Ruiz v. Semaia*, No. 26-cv-4785, 2026 WL 2618420, at *1 (C.D. Cal. Sept. 3, 2026) (dismissing habeas petition with prejudice because "Petitioner does not allege that he has been unlawfully denied a bond hearing or otherwise show that his unlawful arrest warrants his release from custody."); *Chateauneuf v. Chestnut,* No. 26-cv-1073, 2026 WL 523695, at *3 (E.D. Cal. Feb. 25, 2026) ("[T]he court will waive the prudential exhaustion requirement because the relief that the court will grant by this order—a hearing in front of an immigration judge at which Petitioner's eligibility for bond must be considered—is precisely the relief that prudential exhaustion would require.").

B. Petitioner Has Not Met His Burden to Show Likely Irreparable Harm Without Immediate Injunctive Relief

In addition to his failure to show a likelihood of success on the merits, Petitioner does not meet his burden of establishing that he will be irreparably harmed absent a preliminary injunction. Petitioner primarily claims two categories of injury: (1) constitutional deprivation of rights based on detention; and (2) "a serious medical condition, Sinus Oral Communication". Dkt. No. 3 at 7.

First, any alleged harm from the fact of detention alone is insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). And as noted by the Ninth Circuit in *Rodriguez Diaz*, the risk of erroneous deprivation and value of additional process is small due to the procedural safeguards that Section 1226(a) provides. 53 F.4th at 1209. Petitioner is entitled to request a bond hearing before an IJ, and if he can show that he would not pose a flight risk or danger, he may be

released. Accordingly, Petitioner cannot establish that his lawfully authorized detention would cause irreparable harm.

Additionally, the alleged infringement of Petitioner's rights is insufficient when—as here—Petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of [his] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-7193, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm").

Finally, Petitioner's claimed harm would be inherently linked with *any* detention, regardless of if it is lawful or unlawful. *See Herrera v. Noem*, 825 F. Supp. 3d 1025, 1044 (D. Ariz. 2026) ("That he may suffer consequences resulting from his detention does not mean he is suffering such consequences 'needlessly.'") (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)); *see also id.* ("Indeed, the court noted that the harms of detention would 'continue to occur needlessly,' indicating that such harms would not be sufficient to tip in favor of a petitioner complaining of immigration detention if such detention were lawful.") (citing *Hernandez*, 872 F.3d at 995).

C. The Balance of Equities and Public Interest

When the government is a party, the last two factors that Petitioner must establish to obtain a preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Petitioner's motion 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). Even if Petitioner's claimed harm was cognizable, it cannot outweigh this public interest in application of the law, particularly since courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). While it is "always in the public interest to protect constitutional rights," if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that public interest does not

outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in upholding the existing regulatory scheme, ensuring that the role of the immigration courts is not usurped or improperly collaterally attacked through habeas proceedings, and requiring Petitioner to avail himself of the procedure protections already afforded by the § 1226(a) framework rather than creating additional, burdensome processes, is significant.

V. CONCLUSION

For the foregoing reasons, the Court should deny the request for preliminary injunction, deny the habeas petition, and enter judgment in favor of Respondents. In denying the motion for preliminary injunction, the Court should require Petitioner to self-surrender to ICE to be remanded to ICE custody, so that he may seek release through a custody hearing before an immigration judge, in accordance with Congress's intent and Ninth Circuit precedent.

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Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Michael J. Starrett
MICHAEL J. STARRETT
Special Assistant United States Attorney

Attorneys for Respondents