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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Maksim Kunitskii,

13 Petitioner,

14 v.

15 Fred Figueroa,

16 Respondent.

No. CV-25-01845-PHX-DJH (JFM)

**RESPONDENT'S OPPOSITION TO
PETITIONER'S MOTION FOR A
PRELIMINARY INJUNCTION**

17
18 **I. INTRODUCTION**

19 After years of unprecedented levels of illegal border crossings into the United
20 States, on January 20, 2025, the President responded to the crisis by issuing Proclamation
21 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 20,
22 2025), explaining that “[t]he sheer number of aliens entering the United States has
23 overwhelmed the system and rendered many [Immigration and Nationality Act (INA)]
24 provisions ineffective, including those ... intended to prevent aliens posing threats to public
25 health, safety, and national security from entering the United States.” *Id.* The President
26 emphasized that, “[a]s a result, millions of aliens who potentially pose significant threats
27 to health, safety, and national security have moved into communities nationwide.” *Id.*

28 The President invoked his statutory authority under 8 U.S.C. §§ 1182(f) and 1185(a)

1 to proclaim that the unlawful “entry into the United States” by aliens across the southern
2 border “is detrimental to the interests of the United States,” and to direct that such entry
3 “be suspended” and aliens attempting such entry be “restricted from invoking provisions
4 of the INA that would permit their continued presence in the United States.” Proclamation
5 §§ 1, 2, 90 Fed. Reg. at 8335; *see* 8 U.S.C. § 1182(f) (authorizing the President to “suspend
6 the entry of all aliens or any class of aliens” and “impose on the entry of aliens any
7 restrictions he may deem to be appropriate” and “[w]henver the President finds that the
8 entry of [such] aliens into the United States would be detrimental to the interests of the
9 United States”); *Trump v. Hawaii*, 585 U.S. 667, 684 (2018). The President additionally
10 made the same finding and imposed the same restrictions on entry at all borders and ports
11 of entry as to any alien who fails “to provide Federal officials with sufficient medical
12 information and reliable criminal history and background information.” Proclamation § 3,
13 90 Fed. Reg. at 8335. In addition, the President invoked his “express and inherent powers
14 in Article II of the Constitution of the United States,” as well as his responsibility to
15 “effectuate the guarantee of protection [to the States] against invasion required by Article
16 IV, Section 4,” of the Constitution. Proclamation § 4, 90 Fed. Reg. at 8335.

17 Petitioner essentially asks this Court to override the President’s judgment in
18 articulating a national interest through issuance of the Proclamation and order relief barred
19 by the Proclamation. However, because the Court lacks jurisdiction to do so, Petitioner
20 cannot establish a likelihood of success on the merits and the motion for a temporary
21 restraining order or preliminary injunction should be denied.

22 **II. LEGAL AND PROCEDURAL BACKGROUND**

23 **A. Legal Background**

24 “The exclusion of aliens is a fundamental act of sovereignty,” and “[t]he right to do
25 so stems not alone from legislative power but is inherent in the executive power to control
26 the foreign affairs of the nation.” *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542
27 (1950). Consistent with that principle, Congress has accorded the President broad authority
28 to suspend or restrict the entry of aliens. Section 1182(f) of Title 8 provides in relevant

1 part:

2 Whenever the President finds that the entry of any aliens or of any class of
3 aliens into the United States would be detrimental to the interests of the
4 United States, he may by proclamation, and for such period as he shall deem
5 necessary, *suspend the entry of all aliens or any class of aliens* as
immigrants or nonimmigrants or *impose on the entry of aliens any*
restrictions he may deem to be appropriate.

6 8 U.S.C. § 1182(f) (emphasis added). “By its terms, § 1182(f) exudes deference to the
7 President in every clause,” and “entrusts to the President the decisions whether and when
8 to suspend entry . . . ; whose entry to suspend . . . ; for how long . . . ; and on what
9 conditions” *Hawaii*, 585 U.S. at 684. The President is also granted broad authority to
10 adopt “reasonable rules, regulations, and orders” governing the entry of aliens, and the
11 President may make entry “subject to such limitations and exceptions as [he] may
12 prescribe.” 8 U.S.C. § 1185(a)(1).

13 Although “normally Congress supplies the conditions of the privilege of entry into
14 the United States,” “because the power of exclusion of aliens is also inherent in the
15 executive department of the sovereign, Congress may in broad terms authorize the
16 executive to exercise the power” without raising delegation concerns. *Knauff*, 338 U.S. at
17 543. As the Supreme Court has repeatedly held, Article II confers upon the President
18 expansive authority over foreign affairs, national security, and immigration. *See*
19 *Harisiades v. Shaughnessy*, 342 U.S. 580, 588 (1952); *Knauff*, 338 U.S. at 542; *United*
20 *States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936). Thus, where, as here, “the
21 President acts pursuant to an express or implied authorization of Congress,” *i.e.* 8 U.S.C.
22 §§ 1182(f) and 1185(a)(1), coupled with the President’s own Article II powers over foreign
23 affairs and national security, “his authority is at its maximum, for it includes all that he
24 possesses in his own right plus all that Congress can delegate.” *Youngstown Sheet & Tube*
25 *Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *see Zivotofsky ex rel.*
26 *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2083-84 (2015) (similar).

27 B. The Proclamation

28 On January 20, 2025, President Trump issued Proclamation 10888, *Guaranteeing*

1 *the States Protection Against Invasion*. The President noted that Congress has created a
2 complex scheme in the INA, 8 U.S.C. § 1101 et seq., to control entry across the border of
3 the United States that, in routine circumstances, protects United States sovereignty and
4 prevents entry of aliens who pose threats to public health or national security. 90 Fed. Reg.
5 at 8333. But the INA's screening provisions "can be wholly ineffective in the border
6 environment, where access to necessary information is limited for aliens who have traveled
7 from countries around the world to enter the United States illegally, or when the system is
8 overwhelmed, leading to the unauthorized entry of innumerable illegal aliens into the
9 United States." *Id.*

10 "Due to significant information gaps—particularly in the border environment—and
11 processing times, Federal officials do not have the ability to verify with certainty the
12 criminal record or national-security risks associated with the illegal entry of every alien at
13 the southern border, as required by" 8 U.S.C. § 1182(a)(2) – (3). 90 Fed. Reg. at 8333.
14 "Nor do aliens who illegally cross the southern border readily provide comprehensive
15 background information from their home countries to Federal law enforcement officials."
16 *Id.* "The public safety and national security risks in such an environment are heightened by
17 the presence of, and control of territory by, international cartels and other transnational
18 criminal organizations on the other side of the southern border, as well as terrorists and
19 other malign actors who intend to harm the United States and the American people." *Id.*

20 The Federal Government also "currently lacks an effective operational capability to
21 screen all illegal aliens crossing the southern border for communicable diseases of public-
22 health concern, as required by" 8 U.S.C. § 1182(a)(1). 90 Fed. Reg. at 8334. "As a result,
23 innumerable aliens potentially carrying communicable diseases of public health
24 significance illegally cross the southern border and enter communities across the United
25 States." *Id.* "Over the last 4 years, at least 8 million illegal aliens were encountered along
26 the southern border of the United States, and countless millions more evaded detection and
27 illegally entered the United States." *Id.* "The sheer number of aliens entering the United
28 States has overwhelmed the system and rendered many of the INA's provisions ineffective,

1 including those . . . intended to prevent aliens posing threats to public health, safety, and
2 national security from entering the United States.” *Id.* “As a result, millions of aliens who
3 potentially pose significant threats to health, safety, and national security have moved into
4 communities nationwide.” *Id.*

5 The President thus determined that “the current situation at the southern border
6 qualifies as an invasion.” 90 Fed. Reg. at 8335. Accordingly, to address this situation, the
7 President invoked his authority under 8 U.S.C. §§ 1182(f) and 1185(a) and found “that the
8 entry into the United States . . . of aliens engaged in the invasion across the southern border
9 is detrimental to the interests of the United States,” and thus suspended the “entry into the
10 United States of such aliens” until “a finding that the invasion at the southern border has
11 ceased.” Proclamation § 1. The Proclamation further restricts “aliens engaged in the
12 invasion across the southern border” from “invoking the provisions of the INA that would
13 permit their continued presence in the United States, including, but not limited to” 8 U.S.C.
14 § 1158 (the INA’s asylum provisions), until the President issues “a finding that the invasion
15 at the southern border has ceased.” Proclamation § 2.

16 Additionally, the President determined “that the entry into the United States . . . of
17 any alien who fails, before entering the United States, to provide Federal officials with
18 sufficient medical information and reliable criminal history and background information
19 as to enable fulfillment of the requirements of” 8 U.S.C. § 1182(a)(1)–(3), “is detrimental
20 to the interests of the United States”; he therefore suspended “entry into the United States
21 of such aliens” and “restrict[ed] their access to provisions of the INA that would permit
22 their continued presence in the United States, including, but not limited to” 8 U.S.C.
23 § 1158. Proclamation § 3. Finally, the President invoked his “express and inherent powers
24 in Article II of the Constitution of the United States,” including “control over foreign
25 affairs,” to suspend “the physical entry of any alien engaged in the invasion across the
26 southern border of the United States” until the President issues “a finding that the invasion
27 at the southern border has ceased.” Proclamation § 4.

28 C. Implementation of the Proclamation

1 In accordance with the Proclamation, aliens who cross the southern land border
2 between ports of entry are subject to the Proclamation's suspension and restrictions on
3 entry. Aliens who fall into this category (other than unaccompanied alien children
4 ("UAC")) and are encountered and apprehended by U.S. Border Patrol ("USBP") agents,
5 may be processed for expedited removal or for direct repatriation under Section 1182(f).
6 Such aliens are not permitted to apply for asylum under 8 U.S.C. § 1158 or statutory
7 withholding of removal under 8 U.S.C. § 1231(b)(3) as these are "provisions of the INA
8 that would permit their continued presence in the United States." Proclamation § 2. Aliens
9 who manifest a fear related to the country to which U.S. Customs and Border Protection
10 ("CBP") intends to return or remove them, however, will be referred to U.S. Citizenship
11 and Immigration Services ("USCIS") for an assessment to determine if it is more likely
12 than not that the alien will be tortured in the designated country of return or removal in
13 accordance with the Convention Against Torture ("CAT"). USCIS provides the referring
14 entity (CBP or U.S. Immigration and Customs Enforcement ("ICE")) with the results of
15 the CAT assessment. If there is a positive CAT assessment, the alien may be served with a
16 Notice to Appear in removal proceedings for further consideration of the request for CAT
17 protection by an immigration judge ("IJ"), or another country may be designated for return
18 or removal. If an alien subject to the Proclamation does not manifest fear of return to the
19 designated country of return, or if the CAT assessment is negative, CBP may proceed with
20 return or removal to the alien's home country, Mexico, or a third country.

21 Thus, under the USBP implementing procedures, some aliens who are apprehended
22 after entering illegally between ports of entry are processed under the Proclamation for
23 repatriation to their home country, Mexico or to a third country. Others are processed,
24 pursuant to the authority in the Proclamation, including Section 1182(f) (INA § 212(f)),
25 for expedited removal and receive expedited removal orders under 8 U.S.C. § 1225(b)(1).
26 The Proclamation also prevents the entry of aliens who have not provided sufficient
27 medical information and reliable criminal history and background information to enable
28 fulfillment of the requirements of 8 U.S.C. §§ 1182(a)(1)-(3). Proclamation § 3. CBP's

Office of Field Operations' (OFO) implementing procedures provide that, at ports of entry, CBP officers will generally not permit aliens (other than UACs)¹ who lack lawful permanent resident status or valid entry documents or authorizations to cross the international boundary to enter the United States. If an alien subject to Section 3 of the Proclamation nonetheless evades boundary-line operations or otherwise crosses the boundary line at a port of entry, that alien will generally be processed for removal. In accordance with Section 3, these aliens are not provided the opportunity to seek asylum or statutory withholding of removal. If the alien manifests fear, OFO officers will refer him to USCIS for a CAT screening. Based on the outcome of the CAT assessment, CBP officers will further process the alien for removal, immigration proceedings, or detention, as appropriate.

D. Procedural History

Petitioner, Maksim Kunitski, is a citizen of Russia. Exhibit A, Record of Deportable/Inadmissible Alien. On February 17, 2025, he unlawfully crossed the southern border with his wife Ekaterina Kunitskaia² in between ports of entry without being admitted or inspected. *Id.* He was encountered by CBP and deemed inadmissible and subject to expedited removal proceedings under the Proclamation, pursuant to INA § 212(f) (8 U.S.C. § 1182(f)). *Id.* He was issued a Notice and Order of Expedited Removal pursuant to the determination of his inadmissibility. Ex. B, Expedited Removal Order. At that time, he did not manifest fear of return or express an intention to apply for asylum, fear of persecution or torture, or express a fear of returning to Russia. Ex. A. at 2. But later, Petitioner was referred to USCIS for an interview on February 28, 2025, to assess his claim that he feared torture in Russia. Ex. C, CAT Assessment. On March 5, 2025, the USCIS asylum officer who assessed Petitioner's CAT claim found that he did not establish that it

¹ The Proclamation does not change existing policies on the identification and processing of UACs.

² Ekaterina Kunitskaia also filed Petition for Writ of Habeas and a pending Motion for Preliminary Injunction. *See* CV-25-01846-PHX-DJH (ASB).

1 was more likely than not that he would be tortured if removed to Russia. *Id.*

2 On May 29, 2025, Petitioner filed the Complaint in this case. Doc. 1. The Complaint
3 brings two causes of action against the Government. *Id.* Count I requests a writ of
4 mandamus on the basis of the Government's alleged failure to allow Petitioner to apply for
5 asylum and review by an IJ. *Id.* at 7-8. Count II addressed a stay of removal pending
6 resolution of ongoing class action litigation addressing Section 212(f). *Id.* at 9. Petitioner
7 asks this Court to order the Government to provide Petitioner with a credible fear or asylum
8 interview and referral to an IJ of any negative credible fear determination. *Id.* at 13. On
9 June 3, 2025, Petitioner filed a request to stay his removal pending resolution of his
10 petition. Doc. 8. On June 3, 2025, the Court construed Petitioner's request for a stay as a
11 motion for temporary restraining order (TRO) or preliminary injunction, denied the TRO
12 without notice, and ordered the Government to respond to the request for TRO or
13 preliminary injunction by June 6, 2025. Doc. 9. On June 5, 2025, the United States was
14 served with the Petition. Doc. 15.

15 **III. ARGUMENT**

16 **A. Standard of Review.**

17 A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*,
18 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only
19 "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural*
20 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction,
21 the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims;
22 (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that
23 the balance of equities tips in its favor; and (4) that the proposed injunction is in the public
24 interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a]
25 stay is not a matter of right, even if irreparable injury might otherwise result" but is instead
26 an exercise of judicial discretion that depends on the particular circumstances of the case.
27 *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States*, 272
28 U.S. 658, 672 (1926)).

1 At the threshold, a motion for a temporary restraining order or preliminary injunction
2 must be denied if the court lacks subject matter jurisdiction over the claims. *Williams v.*
3 *DOJ*, No. 2:24-cv-05406-DDP (AJR), 2024 WL 3915922, at *2 (C.D. Cal. July 25, 2024)
4 (finding no showing of likelihood of success on the merits without subject matter
5 jurisdiction); *Sarah Kent, Inc. v. Stella*, CIV. No. 89-888 AWT, 1989 WL 139222, at *1
6 (C.D. Cal. Aug. 2, 1989) (“Plaintiff Scott’s motion for preliminary injunction is denied as
7 moot, there being no subject matter jurisdiction to address said motion on the merits.”).

8 B. Petitioner Cannot Establish a Likelihood of Success on the Merits.

9 1. Petitioner Cannot Succeed on Counts I and II.

10 Petitioner cannot establish a likelihood of success on Count I or Count II of the
11 Complaint for two reasons: 1) the Presidential Proclamation bars these claims and was a
12 valid exercise of the President’s vested authority under 8 U.S.C. §§ 1182(f) and 1185(a) as
13 legal methods to cope with the rampant issue of illegal entries facing the southern border,
14 and Article II of the Constitution, and 2) the Court lacks subject matter jurisdiction over
15 these claims or to grant the relief requested.

16 Count I of the Complaint challenges the Government’s decision not to provide
17 Petitioner with a credible fear determination subject to review by an IJ as provided for
18 under 8 U.S.C. § 1225(b)(1), which provides for expedited removal of aliens found
19 inadmissible under 8 U.S.C. § 1182(a). But the asylum provisions of the INA and its
20 implementing regulations do not apply here because Petitioner was found to be
21 inadmissible under § 1182(f) and the President has specifically restricted access to the
22 asylum provisions of the INA to aliens found to be inadmissible under § 1182(f). Petitioner
23 cannot establish a likelihood of success on the merits of these claims because the President
24 has broad discretion under the INA and Article II to suspend entry of classes of aliens and
25 to place restrictions on entry. Here, the asylum provisions of the INA and its implementing
26 regulations have been specifically restricted by the President’s authority under 8 U.S.C. §§
27 1182(f) and 1185(a) to impose on the entry of aliens any restrictions he deems appropriate.

28 Based on their plain text, these statutes provide no basis for judicial second-guessing

1 of the President’s determinations about what restrictions to prescribe or what restrictions
2 are necessary to avoid detriment to the interests of the United States. Congress specifically
3 entrusted those matters to the President, and “the power to expel or exclude aliens as a
4 fundamental sovereign attribute exercised” by the political branches remains “largely
5 immune from judicial control.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). Indeed, “[t]he
6 right to do so stems not alone from legislative power but is inherent in the executive power
7 to control the foreign affairs of the nation.” *Knauff*, 338 U.S. at 542; *see Am. Ins. Ass’n v.*
8 *Garamendi*, 539 U.S. 396, 414 (2003) (holding that the “historical gloss on the executive
9 Power vested in Article II of the Constitution has recognized the President’s vast share of
10 responsibility for the conduct of our foreign relations” (internal quotation marks omitted)).

11 The “long-established rule”—which undergirds both Sections 1182(f) and
12 1185(a)—is that “the power over aliens is of a political character and therefore subject only
13 to narrow judicial review.” *See Fiallo*, 430 U.S. at 792 (quotation marks omitted); *see also*
14 *Hawaii*, 585 U.S. at 686, 704 (holding that “plaintiffs’ request for a searching inquiry into
15 the persuasiveness of the President’s justifications [was] inconsistent with the broad
16 statutory text and the deference traditionally accorded the President in th[e] sphere” of
17 immigration, which “overlap[s] with the area of national security,” among others
18 (quotation marks omitted)). Here, the restrictions introduced by the President under
19 Sections 1182(f) and 1185(a) are inextricably linked to his “broad power over the creation
20 and administration of the immigration system,” which necessarily includes the regulation
21 of such discretionary benefits as asylum. *Kerry v. Din*, 576 U.S. 86, 106 (2015) (Kennedy,
22 J., concurring in judgment). In addition to the clear statutory basis on which the
23 Proclamation rests, the President’s decision to impose restrictions in the national interest
24 is a fundamental act of sovereignty and consistent with his Executive duty to maintain
25 effective control over the immigration system as a whole. *Knauff*, 338 U.S. at 542–43. The
26 Proclamation is a valid exercise of the President’s authority under Sections 1182(f) and
27 1185(a) and is not subject to review. *Hawaii*, 585 U.S. at 683. The President’s authority
28 under Section 1182(f) encompasses the authority to “impose additional limitations on entry

beyond the grounds for exclusion set forth in the INA.” *Id.* at 691.

“The INA provides the president with certain emergency tools.” 90 Fed. Reg. 8333 (Jan. 20, 2025). The Supreme Court held in *Trump v. Hawaii*, that Section 1182(f) “grants the President broad discretion to suspend entry of the aliens into the United States.” 585 U.S. 667, 683-84 (2018). Here, 8 U.S.C. § 1252(a)(2)(A) applies because the President’s proclamation is expressly contemplated and provided for within the INA as a mechanism to respond to the “entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States.” 8 U.S.C. § 1182(f).

While it is true that the “President may not override particular provisions of the INA through the power granted to him in § 1182(f),” *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 760, (9th Cir. 2018),³ it should not be overlooked that it is the INA itself, in sections 1182(f) and 1185(a) that specifically authorizes the President to set conditions and restrictions on entry which includes access to provisions of the INA that would allow aliens seeking entry into the United States continued presence in the United States. 8 U.S.C. §§ 1182(f), 1185(a)

Even without the extraordinarily deferential language of Section 1182(f), the President’s action here would be supported by the inherent authority of the Executive over admissions decisions. Since the advent of federal immigration law in the 1880s, the Supreme Court has recognized that the power of excluding aliens from U.S. territory is an inherent attribute of sovereignty exercised by the political branches of the government. *See Curtiss-Wright Export Corp.*, 299 U.S. at 318 (“It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution.”); *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892) (“It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of

³ This District Court’s Order granting Petitioner Fatemeh Tabatabaeifar’s Motion for a Preliminary Injunction in CV-25-01238-PHX-GMS (MTM) primarily relies heavily on *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 760, (9th Cir. 2018), in which the Presidential Proclamation itself was unchallenged.³

1 foreigners within its dominions, or to admit them only in such cases and upon such
2 conditions as it may see fit to prescribe.”). Thus, “[w]hen Congress prescribes a procedure
3 concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is
4 implementing an inherent executive power.” *Knauff*, 338 U.S. at 542. Asylum is a
5 discretionary form of relief that is permissibly precluded by the suspension authority of
6 Section 1182(f).

7 Further, to the extent Petitioner challenges the Proclamation for failing to follow the
8 requirements of the expedited removal statute, 8 U.S.C. § 1225(b)(1), 8 U.S.C. §
9 1252(a)(2)(A) bars this Court from reviewing such claims. In addition, Petitioner’s request
10 for relief requiring the Government to implement various INA provisions in a particular
11 manner—*e.g.*, in the manner they were implemented prior to the Proclamation—is barred
12 by 8 U.S.C. § 1252(f)(1).

13 Although 28 U.S.C. § 1331 generally supplies jurisdiction over federal questions, 8
14 U.S.C. § 1252(a)(2)(A) eliminates jurisdiction for claims related to the decision to invoke
15 the provisions of the expedited removal statute unless expressly permitted by 8 U.S.C. §
16 1252(e). *See Make the Road v. Wolf*, 962 F.3d 612, 626 (D.C. Cir. 2020). Section
17 1252(a)(2)(A), titled “Matters not subject to judicial review,” provides that
18 “[n]otwithstanding any other provision of law . . . no court shall have jurisdiction to review
19 . . . except as provided in subsection (e),” “a decision . . . to invoke the provisions of such
20 section,” or “procedures and policies adopted . . . to implement” § 1225(b)(1). 8 U.S.C. §
21 1252(a)(2)(A)(i), (ii), (iv). Section 1252(a)(2)(A) removes from federal courts any
22 jurisdiction to review issues “relating to section 1225(b)(1),” *i.e.*, expedited removal
23 proceedings or credible fear determinations, other than as permitted by § 1252(e). *See*
24 *Patchak v. Zinke*, 583 U.S. 244, 248-49 (2018) (“notwithstanding any other provision of
25 law” in jurisdictional provision encompasses 28 U.S.C. § 1331). 8 U.S.C. § 1252(e) only
26 allows for review of expedited removal proceedings in the context of a habeas petition,
27 which is not the nature of the action before this Court.

28 Additionally, the Court lacks jurisdiction under 8 U.S.C. § 1252(f)(1) to grant any

1 relief that would compel the government to operate multiple covered INA provisions in a
2 specific manner. 8 U.S.C. § 1252(f)(1). Petitioner requests that the Court compel
3 Respondents to conduct a credible fear interview of the Petitioner under the asylum
4 standard pursuant to 8 C.F.R. § 208.30(e)(2). Petitioner also asks the Court to compel
5 Respondents to refer Petitioner's negative credible fear determination to an IJ for review
6 under the provisions of 8 C.F.R. § 208.30(g)(2)(iv)(A) and related regulations, but the
7 Court lacks jurisdiction to grant this relief under 8 U.S.C. § 1252(f)(1). Because this Court
8 lacks jurisdiction to review Petitioner's challenges to the expedited removal process under
9 8 U.S.C. § 1252(a)(2)(A) or order the relief he requests, under §1252(f)(1), Petitioner is
10 unlikely to succeed on the merits of his claims.

11 C. Petitioner Cannot Establish Irreparable Harm.

12 Under Supreme Court precedent, "the burden of removal alone cannot constitute the
13 requisite irreparable injury." *Nken*, 556 U.S. at 438. That is particularly true when the alien
14 is an applicant for admission and has not yet been admitted to the United States.

15 D. The Balance of Equities and Public Interest Weigh in Favor of the
16 Government.

17 Where the Government is the opposing party, the balance of equities and public
18 interest factors merge. *Nken*, 556 U.S. 418, 435 (2009). Where the Government is the
19 opposing party, courts "cannot simply assume that ordinarily, the balance of hardships will
20 weigh heavily in the applicant's favor." *Id.* at 436 (citation and internal quotation marks
21 omitted). Here, the public interest weighs in favor of denying the application. "Control
22 over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Office*
23 *of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest lies in the
24 Executive's ability to enforce U.S. immigration laws.

25 E. The Court Should Require a Bond.

26 If the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ.
27 P. 65(c), which states, "The court may issue a preliminary injunction or a temporary
28 restraining order only if the movant gives security in an amount that the court considers

1 proper to pay the costs and damages sustained by any party found to have been wrongfully
2 enjoined or restrained.” Fed. R. Civ. P. 65(c). Here, because Petitioner is subject to
3 removal, the amount of any bond should be akin to an appearance bond.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court should deny Petitioner’s request for a TRO or
6 preliminary injunction.

7 Respectfully submitted on June 6, 2025.

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