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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HARMAN SINGH, Petitioner, v. TONYA ANDREWS, FACILITY ADMINISTRATOR, GOLDEN STATE ANNEX[1], Respondent.	CASE NO. 1:25-cv-801 KES SKO OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER DATE : July 10, 2025 TIME : 9:30 a.m. CTRM : 6, Robert E. Coyle Courthouse JUDGE: Hon. Kirk E. Sherriff

[1] Respondent moves to strike and dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir, 1996); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). Here, Petitioner's custodian is the facility administrator at the Golden State Annex located in McFarland, California.

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I. INTRODUCTION

Petitioner Harman Singh's request for the extraordinary remedy of a temporary restraining order ("TRO") is both procedurally and substantively deficient and should be denied. Procedurally, it should be denied because the TRO and habeas petition both seek the same ultimate relief and not merely to maintain the status quo pending a determination on the merits. Substantively, the TRO should be denied as unnecessary because Petitioner is eligible for a bond hearing before an Immigration Judge ("IJ") since his removal proceedings are pending appeal at the Board of Immigration Appeals ("BIA"). If the BIA appeal does not result in a decision in Petitioner's favor, he can further appeal directly to the Ninth Circuit. Petitioner should not be allowed to sidestep the available immigration process and burden this Court with an expedited TRO and premature habeas petition. Petitioner's pending appeal and potential for bond review also prevent him from showing that the requisite likelihood of irreparable harm exists if the TRO is denied. Petitioner also cannot meet his burden of clearly showing that he is likely to succeed on the merits since he received all due process required. Finally, the balance of equities and public interest favor denial of the TRO as the Executive has an important interest in exercising its enforcement authority under the Immigration and Nationality Act ("INA"). Thus, Petitioner's TRO should be denied.

II. BACKGROUND

A. The Constitution and federal statutes confer broad power on the Executive Branch to administer the immigration system.

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The primary immigration statute, the INA, originally enacted in 1952, sets forth a comprehensive plan to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. As set forth therein: the President, through the Department of State and the Department of Homeland Security ("DHS"), decides which noncitizens may enter and remain in the United States. *See generally* 8 U.S.C. §§ 1103, 1104.

Under the INA, if an applicant for admission seeks admission to the United States without a valid entry document, a DHS immigration officer issues document called a notice to appear, which notifies the noncitizen of the charges and statutory provisions violated. Removal proceedings begin when the notice to appear is filed with an immigration court. 8 C.F.R. § 239.1, § 1003.14. The notice to appear indicates when and where the proceedings will be held. 8 U.S.C. § 1229(a)(1)(G). An Immigration Judge ("IJ") conducts the proceedings for deciding the inadmissibility or removability of a noncitizen. 8 U.S.C. § 1229a(a)(1). If the IJ sustains a charge of removability or inadmissibility in the notice to appear, the noncitizen may file an application for relief. The grant of an application for relief would result in the ability to lawfully remain in the country, such as Form I-589, Asylum Application.

During the noncitizen's removal proceedings, the noncitizen may be represented by counsel at no expense to the government. 8 U.S.C. § 1229a(b)(4)(A). Noncitizens may also have the opportunity to examine the evidence against them, to present evidence on their own behalf, and to cross-examine the government's witnesses. 8 U.S.C. § 1229a(b)(4)(A). Noncitizens may request asylum, withholding of removal, or withholding of removal under regulations implementing the Convention Against Torture. A noncitizen who is dissatisfied with an IJ's decision may appeal to the BIA. After an adverse BIA decision, the noncitizen may seek further review in a federal court of appeals. 8 U.S.C. § 1252.

The INA "authorizes the Attorney General to arrest and detain an alien[2] 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The courts have recognized that "there is little question that the civil detention of [noncitizens] during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable … [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed.'" *Prieto–Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

B. Overview of expedited removal and credible fear proceedings.

Before 1996, the INA provided for "two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings." *Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (citation and internal quotation marks omitted). To eliminate an incentive to enter unlawfully, Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, Tit. I, 110 Stat. 3009-546, replaced the dual "exclusion" and

[2] The word "alien" corresponds with Congress's choice of words in the statute; this brief uses "alien" and "noncitizen" interchangeably.

"deportation" procedures with a uniform "removal" procedure. *Vartelas*, 566 U.S. at 262. In IIRIRA, Congress established the expedited removal process to ensure that the Executive Branch could "expedite removal of aliens lacking a legal basis to remain in the United States." [3] *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) ("[When Congress enacted [IIRIRA], it crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Under the expedited removal process, certain noncitizens who lack valid entry documentation or make material misrepresentations are "order[ed] . . . removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

The expedited removal system's "streamline[d] rules and procedures" for "deny[ing] admission to inadmissible aliens" include added protections for noncitizens who claim a fear of return to their home countries or express an intent to apply for asylum. *See* House Report at 157-58; *see also* 8 U.S.C. § 1225(b)(1)(A)(ii), (B); H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209 (1996). Rather than immediately being ordered removed, asylum seekers are referred for screening before a USCIS asylum officer, who conducts an interview, reviews relevant facts, and makes a credible fear determination. *See* 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. § 208.30(d),(e); *see also Thuraissigiam*, 591 U.S. at 109-11 (describing the credible fear process). The noncitizen "may consult with a person or persons of [his] choosing" before the credible fear screening, so long as it does not unreasonably delay the process. *See* 8 C.F.R. § 208.30(d)(4) (further allowing for a representative to be present, "at the discretion of the asylum officer, to present a statement at the end of the interview"); *see also* 8 C.F.R. § 1003.42(c) (consultation before IJ review). If the asylum officer or IJ finds that the noncitizen has a credible fear, he is referred for full removal proceedings under 8 U.S.C. § 1229a, at which he may apply for asylum or

[3] In establishing procedures for expedited removal, Congress was particularly concerned with abuses of the asylum system. *See* H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1, at 107 (1996) ("House Report"). At the time IIRIRA was enacted, "[t]housands of smuggled aliens arrive[d] in the United States each year with no valid entry documents and declare[d] asylum." *Id.* at 117. Without the procedures for expedited removal, those noncitizens would be placed in full removal proceedings under 8 U.S.C. § 1229a and "could reasonably expect that the filing of an asylum application would allow them to remain indefinitely in the United States." *Id.* at 118. Congress designed the expedited removal system to bypass the more "cumbersome and duplicative" procedures for noncitizens "who arrive in the United States with no valid documents." *Id.* at 107.

other relief or protection from removal. *See* 8 C.F.R. §§ 208.30(e)(5), (f), 235.6(a), 1208.30(g)(2)(iv)(B); *see also* 8 U.S.C. § 1225(b)(1)(B)(ii). If the asylum officer, the supervisory officer, and (if review is sought) the IJ find that the noncitizen lacks a credible fear of persecution on account of protected ground or a credible fear of torture, the statute provides that he shall be ordered "removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1).

C. **Factual Background.**

Petitioner Harmon Singh is a native and citizen of India who unlawfully entered the United States from Mexico on January 13, 2024, when he was 18-years old (dob 9/24/2005). Declaration of Charles Gallenkamp, dated July 7, 2025 ("Gallenkamp Dec."), ¶ 5, Exhibit 1. Petitioner was encountered in the San Diego, California, Border Patrol Sector and admitted to Customs and Border Patrol ("CBP") that he unlawfully entered the United States without the necessary documents to enter, pass through, or to remain in the United States. *Id.* ¶ 4. Petitioner was taken into CBP custody but released the same day on his own recognizance due to a lack of bed space. *Id.* He was served with a Notice to Appear ("NTA"), which is the charging document used to commence removal proceedings before the Immigration Court. *Id.* ¶ 8, Ex. 2. The NTA charged Petitioner with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* The NTA advised Petitioner to appear before an IJ in Santa Ana on June 14, 2024. Petitioner hired an immigration lawyer, changed venue, and submitted an I589 application for asylum. Petitioner appeared with counsel (attending remotely) at his rescheduled initial hearing on May 27, 2025, in San Francisco. *Id.* ¶ 9. At that hearing, Immigration and Customs Enforcement ("ICE") orally moved, pursuant to 8 C.F.R. § 239.2(a)(7)[4], to dismiss the pending removal proceedings under 8 U.S.C. § 1229b (§ 240 proceedings) and instead pursue expedited removal proceedings under 8 U.S.C. § 1225 (§ 235 proceedings). *Id.*, Ex. 3. The IJ told ICE to submit the request in writing, which it did.

After Petitioner left the courtroom, ICE took him into custody for a custody redetermination. *Id.*

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[4] 8 C.F.R. § 239.2(a)(7) states, "Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to §3.14 of this chapter provided the officer is satisfied that circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government."

¶ 10. He was initially taken to the Enforcement and Removal Office ("ERO") in San Francisco but there are no detention facilities in the Northern District of California so he was transferred to the Golden State Annex detention facility in McFarland, California. *Id.*, ¶¶ 11-12, Ex. 4. Because Petitioner was moved out of the Northern District, ICE changed venue to Adelanto, which is the "detained docket" district[5] and renewed its motion to dismiss there. The Adelanto judge granted that motion on June 11, 2025, over Petitioner's objection. *Id.*, Ex. 8. Six days later, Petitioner filed an appeal with the BIA. *Id.* ¶ 15.

In early June 2025, Petitioner also sought bond review. Petitioner's initial request for a bond hearing was rejected because he incorrectly filed it in San Francisco after his case was transferred to Adelanto. Ex. 9. Petitioner's refiled request for a bond hearing was rejected because it contained the wrong A#. *Id.* To date, Petitioner has not corrected the clerical errors and resubmitted his bond request.

Instead, on July 1, 2025, Petitioner filed a Petition for Writ of Habeas Corpus asserting six claims for relief: substantive and procedural due process violations under the Fifth Amendment; unlawful arrest in violation of the Fourth Amendment; violation of the Administrative Procedure Act ("APA"); violation of the right to access courts and petition for redress under the First and Fifth amendments; and expedited removal in violation of the Fifth Amendment. ECF 1, ¶¶ 78–117. The habeas petition seeks Petitioner's immediate release from custody on his own recognizance, an order prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker, and an order prohibiting ICE from placing him in expedited removal proceedings. ECF 1, ¶ 8, prayer. On July 2, 2025, Petitioner filed this TRO reiterating his claims and seeking the same relief on an emergent basis. ECF 5.

III. LEGAL STANDARD

Temporary restraining orders are governed by the same standards applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001); *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions are "never awarded as a right." *Winter v. Nat. Res. Def. Council,*

[5] Three days after being transferred from the Northern District, the San Francisco Immigration Judge denied DHS's request to dismiss the § 240 INA proceedings finding "it would be an inefficient use of judicial resources to dismiss these proceedings in order to place Respondent in expedited removal proceedings for him to make a credible fear claim (that he has already made, and the Court has already reviewed) to then be placed back in these proceedings." *Id.*, Ex. 6.

Inc., 555 U.S. 7, 24 (2008). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Plaintiffs' burden is "heavy" (*Id.)* and he must provide "substantial proof" and a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

A plaintiff seeking preliminary injunctive relief must establish that: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter*, 555 U.S. at 20). Alternatively, plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

Petitioner has not met his heavy burden here and his TRO should be denied.

IV. ARGUMENT

A. Petitioner's TRO should be denied because it improperly seeks the same relief as his habeas petition.

Petitioner's TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits but instead seeks the ultimate relief he demands in this case. Compare ECFs 1, 5. The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Where a plaintiff seeks to alter the status quo, aka mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994); *see also Dahl v. HEM Pharms. Corp.*, 7 F.3dd 1399, 1403 (9th Cir. 1993) (there is "heightened scrutiny" for mandatory preliminary injunctions). A mandatory injunction "goes well beyond simply maintaining the status quo *pendente lite* and is particularly disfavored." *Id.* at 1320 (internal quotations and alteration omitted). Mandatory injunctions "are not granted unless extreme or very serious damage will result and are not issued in doubtful cases[.]" *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980).

Here, Petitioner's TRO and habeas petition both seek the same relief: his immediate release from custody on his own recognizance, an order prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker, and an order prohibiting ICE from placing him in expedited removal proceedings. ECFs 1, ¶ 8, prayer; ECF 5. By seeking the same relief in both motions, Petitioner was particularly burdening this court and trying to get two bites of the apple: namely a decision from the District Judge on the TRO and findings and recommendations from the Magistrate Judge on the habeas petition through the screening process. EDCA LR 302. Petitioner was also trying to prevent Respondent from having a full and fair opportunity to address the merits. Petitioner had five weeks to prepare his motions, from when he was taken into custody May 27, 2025 to when he filed on July 2, 2025–the cusp of a holiday weekend. Petitioner sought a hearing the morning after he filed his TRO. ECF 6. Although the hearing was delayed one week, Respondent had only three court days to oppose the TRO. ECF 10.

The Ninth Circuit has rejected Petitioner's approach stating, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). This Court has likewise disallowed this approach. *See, e.g., Keo v. Warden of Mesa Verde Ice Processing Center*, No. 1:24-cv-00919-HBK, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024) (denying the TRO of an in-custody detainee who sought the same relief as in the habeas petition finding "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits."). Other districts agree. *See, e.g., Doe v.* Bostock, No. C24-0326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024) (same). Petitioner's TRO should be denied for the same reasons.

B. <u>Petitioner's TRO should be denied for failure to exhaust and lack of jurisdiction.</u>

Petitioner's TRO should also be denied as unnecessary because he is eligible for a bond hearing before an IJ under 8 U.S.C. § 1226(a) since his removal proceedings are pending appeal at the BIA. If the BIA appeal does not result in a decision in Petitioner's favor, he can further appeal directly to the Ninth Circuit. 8 U.S.C. § 1252. Petitioner should not be allowed to sidestep the available immigration process and seek review here.

Although "[t]here is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus," courts generally require such exhaustion "as a prudential matter." *Paz Nativi v. Shanahan*, No. 16-CV-8496, 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017); *see also J.C.G. v. Genalo*, No. 1:24-CV-08755, 2025 WL 88831, at *4 (S.D.N.Y. Jan. 14, 2025) (internal citations omitted). This requirement aims to provide the agency with a chance to correct its own errors, "protect[] the authority of administrative agencies," and otherwise conserve judicial resources by "limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, Petitioner has failed to exhaust administrative remedies even though he has two avenues to pursue release in the immigration proceedings. First, Petitioner has a pending appeal of the order granting the motion to dismiss. Once jurisdiction over removal proceedings vests with an IJ, the decision to dismiss the proceedings is not merely a matter of prosecutorial discretion, and instead involves an informed adjudication by the IJ or BIA based on an evaluation of the factors underlying ICE's motion. *In Re G-N-C*, 22 I. & N. Dec. 281, 284 (BIA 1998). If the BIA appeal is ultimately not in Petitioner's favor, he can further appeal directly to the Ninth Circuit. 8 U.S.C. § 1252.

Second, Petitioner is eligible for a bond hearing before an IJ under 8 U.S.C. § 1226(a). Petitioner knew he is eligible for a bond hearing and requested it in early June. Those requests were rejected for submission errors only–the first one was sent to the wrong court and the second had an incorrect A#. Instead of simply resubmitting the bond request over a month ago, Petitioner unilaterally elected to pursue a TRO and habeas petition. Petitioner has thus remained in custody for the past month (and counting) because he did not re-file the bond request. The ACLU is presumably familiar with the rules and could have helped Petitioner resubmit his bond request without errors or urged his immigration counsel to do so. Their collective failure not to re-file the bond is unjustified.

The decision not to file a corrected bond application was presumably a strategic decision since it would moot these proceedings. *United States v. Sanchez-Gomez*, 584 U.S. 381, 385-86 (2018) ("A case that becomes moot at any point during the proceedings is no longer a 'Case' or 'Controversy' for purposes of Article III, and is outside the jurisdiction of the federal courts." (some internal quotation marks and citation omitted)); *Dembele v. Decker*, No. 18-CV-5070, 2018 WL 4960234, at *3 (S.D.N.Y.

Oct. 9, 2018) (The fact that the IJ's determination on those motions "could potentially moot [the] habeas petition counsels for the Court to stay its hand until the exhaustion of administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings."); *Castillo Lachapel v. Joyce*, 25-CV-4693, ECF No. 12 at 6 (S.D.N.Y. June 16, 2025) ("Because Petitioner's potential bond hearing may provide him with the relief that he seeks—*i.e.*, his release—this Court concludes in the exercise of its discretion that Petitioner must exhaust these avenues before seeking judicial relief."); *Abdala v. I.N.S.*, 488 F.3d 1061, 1064-65 (9th Cir. 2007)(release with supervision as an action that moots a habeas petition).

Petitioner's TRO should also be denied because none of the four recognized exceptions to the exhaustion requirement exist. *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d. Cir. 2003); *Roman v. Decker*, No. 20-cv-3752, 2020 WL 4273823, at *7 (S.D. N.Y., July 24, 2020). First, the appeal and bond procedure show there are available remedies that provide genuine opportunities for adequate relief. Second, Petitioner provides no reason why the available immigration procedures would be futile. Third, courts have rejected Petitioner's argument that irreparable injury from continued detention may occur without immediate judicial relief. *Roman*, 2020 WL 4273823, at *8 ("The risk of prolonged detention"—as opposed to actual prolonged detention—"does not constitute an irreparable injury that excuses the prudential exhaustion requirement."). If the possibility of "continued detention were sufficient to excuse exhaustion, exhaustion would always be excused." *Id.*; *see also Paz Nativi*, 2017 WL 281751, at *2; *Torres v. Decker*, No. 18-CV-10026, 2018 WL 6649609, at *3 n.4 (S.D.N.Y. Dec. 19, 2018). Indeed, if Petitioner had refiled his bond request in early June, it may have been ruled on already. The fourth exception, existence of a substantial constitutional question, also does not excuse Petitioner's failure to exhaust administrative remedies here. When applying this exception, "courts will endeavor to avoid deciding a constitutional issue if the case might be resolved on a narrower factual basis." *Monterosa v. Decker*, No. 20-CV-02653, 2020 WL 1847771, at *5 (S.D.N.Y. Apr. 11, 2020). Here, Petitioner has been detained but has not been denied bond. Indeed, he has not even sought it. Accordingly, "[b]ecause [P]etitioner's claims can be mooted by the possibility of . . . being released on bond after exhausting his administrative remedies, [he] has failed to show that the fourth exception to the prudential exhaustion requirement applies." *Roman*, 2020 WL 4273823, at *7.

Petitioner's TRO should be denied until he exhaust available administrative remedies.

C. Petitioner cannot demonstrate a likelihood of success on the merits because his due process rights were not violated.

If Petitioner's TRO is not denied for his failure to exhaust administrative remedies, it should be denied because none of his due process rights were violated. The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals. . ." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst,* 408 U.S. at 767.

Thus, applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). In 2020, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" explaining that an individual who illegally crosses the border is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). Accordingly, Petitioner's due process rights are limited to whatever statutory rights Congress provides. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (same). None of Petitioner's due process rights were violated and his TRO should be denied.

1. Petitioner qualifies for expedited removal.

Petitioner's TRO fails because ICE has discretion to change his removal procedure. An alien may be removed from the United States by, *inter alia*, expedited removal under 8 U.S.C. § 1225(b)(1) or removal proceedings before an IJ under 8 U.S.C. § 1229a. *See also, e.g., Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011). The regulations do not limit DHS's authority to choose removal proceedings to the time of the initial encounter, but rather authorize DHS to initiate expedited removal within two years of illegal entry. Thus, although Petitioner was initially released on his own recognizance for lack of bed space and initially charged him with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), those removal grounds were subject to change.

Indeed, expedited removal can be applied at any time for an alien who fits within specified criteria. 8 C.F.R. § 235.3(b)(1)(ii). Here, Petitioner falls within the designation that applies to aliens who have "not been admitted or paroled into the United States" and have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* Specifically, Petitioner unlawfully entered the United States on January 13, 2024, less than two years ago, and admittedly did not have the necessary documents to enter, pass through or remain in the United States. Gallenkamp Dec., ¶ 7. Petitioner also falls under the 2004 designation, which applies to aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880.

Because he was a qualifying noncitizen, Petitioner was subject to expedited removal proceedings.

2. <u>Changed circumstances warranted ICE initiating expedited removal proceedings.</u>

Petitioner's TRO fails because ICE had the statutory authority to move to dismiss the initial proceedings and pursue expedited removal based on changed circumstances. 8 C.F.R. § 239.2(a)(7) states, "Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the IJ pursuant to §3.14 of this chapter provided the officer is satisfied that circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government."

By May 27, 2025, changed circumstances existed justifying ICE's decision to pursue Petitioner's expedited removal. Specifically, bed space was now available. *Gallenkamp Dec.*, ¶ 8. Additionally, updated DHS guidance designated those now eligible for expedited removal. 8 U.S.C. § 1225(b), 8 C.F.R. § 235.3(b). These widely known and publicized broader designations, and ICE's redoubled efforts to enforce existing immigration laws, created an increased risk that Petitioner may have more incentive to flee or resort to desperate, dangerous conduct. Based on this statutory authority, and changed circumstances, ICE elected to seek dismissal of the § 240 removal proceedings and place Petitioner in expedited removal proceedings pursuant to 8 U.S.C. § 1225. *See* 8 C.F.R. § 235.1(f)(2); *Matter of W-C-B-*, 24 I&N Dec, 118, 122 (BIA 2007) (affirming the dismissal of proceedings when "removal proceedings [under 8 U.S.C. § 1229a] [a]re not necessary to remove respondent from the United States").

Petitioner cannot avoid expedited removal proceedings by simply claiming that he "is neither a danger nor a flight risk" [TRO 14:11] or because he previously complied with his immigration requirements. Past behavior is not always the best predictor of future conduct, especially given the changed circumstances involved here. Petitioner was only in custody for one day at the border when he illegally entered the United States and he admittedly assumed that he would continue to remain out of custody. ECF 5-2. Petitioner attending the May 27, 2025, master calendar thinking it was a routine hearing and not even contemplating that he may be taken into custody. *Id.* In ICE's experience, its redoubled efforts to enforce immigration laws creates an increased risk that Petitioner has more incentive to flee or resort to desperate conduct. ICE should not be required to simply take Petitioner's word that he won't. Moreover, contrary to Petitioner's claim, DHS never determined "he was not a flight risk" when he was initially released on his own recognizances. Gallenkamp Dec., Exs. 1, 4.

ICE is not required to use the least restrictive mechanism for accomplishing legitimate government interests. *See Demore*, 538 U.S. at 528 ("[W]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal."). Here, the government interests include preventing flight and protecting safety and other significant fiscal and administrative burdens. ICE's decision to commence expedited removal was justified.

3. <u>ICE had unquestionable legitimate reasons for its actions.</u>

Petitioner argues that the dismissal of his § 240 proceedings and re-detention violated his due process rights because they were not made in furtherance of a legitimate enumerated reason. TRO, 13:17. As an initial matter, Petitioner does not plausibly allege facts to raise such an inference. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (A viable complaint must include "enough facts to state a claim to relief that is plausible on its face."). In any event, the federal regulations allow for cancellation of a Notice to Appear and dismissal of removal proceedings without prejudice when the "[c]ircumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." 8 C.F.R. § 239.2(a)(7); *see* 8 C.F.R. § 1239.2(c). Here, as set forth above, DHS moved to dismiss removal proceedings in an exercise of prosecutorial discretion based on changed circumstances since the issuance of the NTA.

To the extent that Petitioner's real complaint is that he believes DHS sought dismissal of § 240 proceedings in order to commence the expedited removal process, "no court" has jurisdiction over that sort of claim. *See* 8 U.S.C. § 1252(g). As discussed above, in the exercise of its constitutional power to define federal court jurisdiction, Congress enacted IIRIRA, which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided that:

> Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended § 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, § 1252(g), now provides:

> Except as provided in this section and notwithstanding any other provision of law *(statutory or nonstatutory)*, including § 2241 of Title 28, or any other habeas corpus provision, and §§ 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (2017) (emphasis added).

The Supreme Court has held that §1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders[.]'" *Reno v. American-Arb Anti-Discrimination* Committee, 525 U.S. 471, 482 (1999) (original emphasis). Here, any request for this Court to enjoin ICE's decision to dismiss Petitioner's removal proceedings under 8 U.S.C. § 1229(a) and place him instead into expedited removal proceedings under 8 U.S.C. § 1225(b) falls directly within at least one of the discrete actions precluded from judicial review. *See Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) ("Considering these circumstances, particularly the existence in the record of a half-completed Form I-860, we conclude that Sissoko's detention arose from Rocha's decision to commence expedited removal proceedings. As a result, 8 U.S.C. § 1252(g) applies[.]"); *Saadulloev v. Garland*, No. 3:23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest [petitioner], clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."). As Section 1252(g) prohibits judicial review of "any cause or claim[,]" this provision applies to constitutional as well as statutory claims. *See Anderson, v. Moniz*, No. 21-cv-11584, 2022 WL 375231, at *4 (D. Mass. Feb. 7, 2022) ("Section 1252(g) can serve as a jurisdictional bar even when a petitioner contends that his due-process rights were violated."); *cf. Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) ("No matter how Matias frames it, his challenge is to the Attorney General's exercise of his discretion to execute Matias's removal order, which we have no jurisdiction to review.").

4. <u>Petitioner's re-detention without a hearing was lawful.</u>

Petitioner wrongly states that "his re-detention without a pre-deprivation hearing violated" his procedural due process rights. ECF 1, ¶ 86. Petitioner has no due process right to never-ending supervision-pending removal. For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases).

Here, Petitioner remains in his § 1229a removal proceedings pending appeal and his detention is governed by 8 U.S.C. § 1226(a), which provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). [6] The Attorney General and DHS have broad discretionary authority to detain or release a noncitizen during removal

[6] The expedited removal statute, 8 U.S.C. § 1225(b), unambiguously mandates detention through the pendency and conclusion of removal proceedings, regardless of their duration, and that the statute authorizes release only through ICE's discretionary authority. The Supreme Court has upheld those provisions. *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 591 U.S. 103 (2020).

proceedings.[7] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523 n.7) ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Removal proceedings "would be in vain if those accused could not be held in custody pending the inquiry into their true character." *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. 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.").

Courts have upheld the revocation of supervised release without notice or an opportunity to be heard. *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), adopted, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019) (in denying continued supervision relief, the court recognized the applicable supervision regulations only provide for an informal interview and that efforts to obtain travel documents warranted revocation.); *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9-*10 (D. Mass. Oct. 1, 2018) (denial of informal interview upon revocation does not entitle habeas petitioner to release)); *Matters of Jaso & Ayala*, 27 I. & N. Dec. 557, 559 (BIA 2019) ("The respondents also argue that by dismissing their proceedings without adjudicating their applications for cancellation of removal, the Immigration Judge violated their right to due process. However, the desire to regularize their status through discretionary relief, such as cancellation of removal, does not entitle them to the commencement and continuation of removal proceedings.").

Petitioner's argument is not supported by *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) and cases

[7] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

involving probationer and parolee rights (TRO, 15:27-17:6), because they involved post-conviction and post-incarceration supervision under other applicable federal statutes and have no application to civil supervision in executive-branch immigration-court removal proceedings. *See Mathews v. Diaz*, 426 U.S. 67, 80 (1976). The standard for revoking parole in the criminal context is inapplicable to civil detention. Instead, the executive branch, through its Attorney General and DHS ICE, is specifically empowered in immigration matters to revoke civil supervised release "in the exercise of discretion." *See* 8 C.F.R. § 241.4. This statute also bars courts from second-guessing the exercise of such discretion. *See* 8 U.S.C. § 1252(a)(2)(B)(ii).

The foregoing shows that Petitioner was not entitled to a hearing prior to revocation of his supervised release. Additionally, as this Court has already recognized, Petitioner cannot even properly request Respondent be enjoined from re-detaining a Petitioner unless this court first holds a hearing and makes factual findings as to whether his re-detainment is warranted:

> Petitioner's proposed injunctive relief interferes with the Executive Branch's authority. At bottom, Petitioner's requested injunctive relief would require this court to make the initial finding that a changed circumstance has occurred such that Petitioner can be re-detained. This request is squarely at odds with the plain language of 8 C.F.R § 241.13(i)(2). *See Van Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. Jun. 20, 2025) (finding the plain language of § 241.13(i)(2), does not allow a court, in the first instance, to make an individualized finding that a changed circumstances has occurred) (*quoting Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Instead, the court is only authorized to review ICE's initial determination of re-detainment in light of the factors set out in C.F.R. § 241.13(f). *Id.*

Phan v. Moises Becerra, 2:25-cv-01757-DC-JDP (June 30, 2025).

5. <u>**Petitioner's detention does not violate his "liberty interests."**</u>

Petitioner's detention does not violate his protected liberty interest and his reliance on the *Mathews v. Eldridge*, 424 U.S. 319 (1976) factors is misplaced. TRO, 16:8-14. Petitioner was on supervision (which is not an unconstrained private interest) for about 16-months (Jan. 13, 2024 to May 27, 2025). Throughout that time, any expectation of a greater protected private liberty interest was, as a matter of law, zero. From onset, Petitioner's supervised liberty was impermanent. Unlike in the criminal context, his supervision was not set to expire. His supervision was not for a limited duration. His supervision, and hence any private interest, would automatically expire upon execution of a final order of removal.

Additionally, the risk of erroneous deprivation of [Petitioner's already limited and impermanent supervised liberty] interest through the procedures used is minimal. *Id.* at 335. Petitioner has sought an appeal and can seek a bond to contest his detention. As to the remaining factor, the government's interests are significant and include, *inter alia*, fiscal and administrative burdens. *Id.* The government has a strong interest in effecting the removal of non-citizens who illegally entered the United States.

Petitioner also cannot establish that the length of his detention violates the Constitution as he has only been detained for less than six week, *i.e.*, since May 27, 2025. *See, e.g. O.D. v. Warden, Stewart Detention Ctr.*, No. 4-20-cv-222-CDL, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Sigal v. Searls*, No. 1:180cv-00389-EAW, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 15-cv-1243-LTS, 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years); *Juarez v. Wolf*, No. C20-1660-RJB-MLP, 2021 WL 2323436 (W.D. Wash. May 5, 2021) (court found 13 months detention leaned in favor of a hearing); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089 (W.D. Wash. May 23, 2019) (same for 14 months detention). No court has found that six weeks is improperly long.

6. <u>Petitioner can request a bond hearing.</u>

Petitioner cannot credibly complain that he has not received any bond (TRO 17:7-18:1) since he unilaterally failed to resubmit his paperwork after it was rejected for ministerial reasons. As discussed above, Petitioner can still request a custody redetermination hearing (*i.e.*, a "bond hearing") before an IJ under 8 C.F.R. §§ 236.1(d)(1). Once properly requested, the IJ will conduct a bond hearing and decide whether to release the noncitizen, based on a variety of factors that account for the noncitizen's ties to the United States and whether the noncitizen poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). The burden of proof is on the noncitizen to "establish to the satisfaction of the IJ and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38; *accord Matter of Adeniji*, 22 I. & N. Dec. at 1114. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964); *see also* 8 C.F.R. § 1003.19(d). BIA's bond decisions are binding on IJs. The noncitizen has an ability to further appeal the decision to the Ninth Circuit. 8 U.S.C. § 1252.

Petitioner's due process rights have not been violated and his TRO should be denied.

D. <u>Petitioner cannot establish a likelihood of immediate irreparable harm.</u>

As discussed above, Petitioner has at least two lawful and accessible options to secure the requested relief (release) in the immigration court. Those options prevent Petitioner from establishing a likelihood of immediate irreparable harm if this TRO is not granted. Indeed, had Petitioner timely re-filed his bond request in early June, he may have been released already.

"[P]roving 'irreparable' injury is a considerable burden, requiring proof that the movant's injury is 'certain, great and actual—not theoretical—and imminent, creating a clear and present need for extraordinary equitable relief to prevent harm.'" *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (quotation omitted). In addition, "the certain and immediate harm that a movant alleges must also be truly irreparable in the sense that it is 'beyond remediation.'" *Elec. Priv. Info. Ctr. v. U.S. Dep't of Just.*, 15 F. Supp. 3d 32, 44 (D.D.C. 2014) (quotation omitted). The movant must "substantiate the claim that irreparable injury is likely to occur" and "provide proof . . . indicating that the harm is certain to occur in the near future." *Wis. Gas Co v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1995). That is because "issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."

Petitioner cannot demonstrate a likely of irreparable injury if the TRO is denied because he has other options to secure the requested relief. While ignoring his unilateral decision to forego pursuing those options for the past six weeks, Petitioner now demands this Court overreach and order another jurist in another forum to perform a task that Petitioner may achieve by simply filing a motion for bond. This Court should decline to create such a precedent, especially after being compelled through a false sense of urgency to by-pass routine procedures. *See, e.g., Romero-Romero v. Wofford*, No. 1:24-cv-00944-SKO (HC), 2025 WL 391861 (E.D. Cal. Feb. 4, 2025).

Moreover, even if Petitioner did not have ready access to an immigration bond proceeding, "it is well established that detention is a constitutionally valid aspect of the deportation process" (*Mathews*, 426 U.S. at 80) that involves the circumstances Petitioner complains of (removal from home, work, temple, church, etc.). Those conditions alone do not create immediate irreparable harms justifying the requested relief. Petitioner's TRO should be denied.

E. <u>The balance of harms and public interest support denying Petitioner's TRO.</u>

The balance of harms and the public interest elements of the injunctive relief test merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-13 (1982).

Here, Petitioner has not met his burden of establishing that the balance of equities or the public interest weighs in his favor of a preliminary injunction in this case. *See Nken*, 556 U.S. at 435–36. To the contrary, the Executive has an important interest in exercising its enforcement authority under the INA. Accordingly, the public interest is best served by denying Petitioner's TRO.

F. <u>Petitioner seeks unlawful relief and the Court's prior Minute Order should be revoked.</u>

Petitioner's request for relief goes beyond what is permissible by statute. As discussed above, this Court cannot issue an order prohibiting Petitioner's re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. *Phan v. Moises Becerra,* 2:25-cv-01757-DC-JDP (June 30, 2025). Petitioner is also not entitled "to immediate release from custody on his own recognizance," as requested. ECF 1, ¶ 8, prayer. At most, the Court may be able to grant partial relief of a bond hearing where Petitioner bears the burden of proof. Of course, Petitioner already has access to that relief in the immigration court if he re-files his request.

Petitioner is also not entitled to "an order prohibiting ICE from placing him in expedited removal proceedings" or any constraints on his placement. This Court should withdraw the temporary minute order it issued stating that, "respondents shall not remove petitioner from the United States nor transfer petitioner out of this District." ECF 10. The Court has no jurisdiction to bar execution of a future removal order. 8 U.S.C. § 1252(g). Specifically, the Court's temporary injunction under the All Writs Act, cites *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966), which is not an immigration case and does not discuss the specific statutory scheme in the INA that expressly bars district courts from enjoining removal. 8 U.S.C. § 1252(g). In the immigration context, the statute precludes judicial review of the decision to execute orders of removal. *Rauda*, 55 F.4th at 777 ("Matias seeks to enjoin the government from removing him—or in other words, enjoin 'action by the Attorney General to ... execute removal orders against [Matias].' . . . . Congress has explicitly precluded our review of this claim."). The Court should reverse its order enjoining the government from executing any removal order in this case.

Similarly, this Court ordered that Petitioner not be moved from this judicial district. Again, the INA Act grants the discretion over the placement and housing of detained aliens to the executive branch. Specifically, 8 U.S.C. § 1231(g)(1) "gives both 'responsibility' and 'broad discretion' to the Secretary 'to choose the place of detention for deportable aliens.'" *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022) (citing *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986), amended by 807 F.2d 769 (9th Cir. 1986)); *Y.G.H. v. Trump*, No. 1:25-CV-00435-KES-SKO, 2025 WL 1519250, at *9 (E.D. Cal. May 27, 2025). For this reason, the Court should vacate that portion of its order enjoining immigration authorities from moving Petitioner to another facility outside the Eastern District of California.

Finally, if any relief is granted, pursuant to Rule 65(c), "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). If the Court grants a TRO or preliminary injunctive relief, the United States respectfully requests that the Court require Petitioner to post security during the pendency of the Court's order in an amount that the Court considers appropriate under Rule 65(c).

V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Petitioner's application for a TRO.

DATED: July 8, 2025

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