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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 TORIBIO FELIPE CASTANON DOMINGO,) Case No. 5:25-cv-05893-NW

14 Petitioner,

15 v.

16 SERGIO ALBARRAN, Field Office Director of
the Enforcement and Removal Operations San)
17 Francisco Field Office, *et al.*,)

18 Respondents.

) **RESPONDENTS' RESPONSE TO ORDER TO**
) **SHOW CAUSE AND OPPOSITION TO**
) **MOTION FOR PRELIMINARY INJUNCTION**

) Date: July 30, 2025
) Time: 10:00 a.m.
) Location: Zoom

) The Honorable Noël Wise
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1 **I. INTRODUCTION**

2 Petitioner Toribio Felipe Castanon Domingo was lawfully detained by officers with the United
3 States Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE")
4 following service of an arrest warrant notifying him of its intent to detain him pursuant to 8 U.S.C.
5 § 1226(a), which grants the Attorney General the discretion to detain noncitizens "pending a decision on
6 whether the alien is to be removed from the United States." The arrest was made following Petitioner's
7 third conviction for driving under the influence and conviction for child endangerment. The Supreme
8 Court and the Ninth Circuit have repeatedly upheld the constitutionality of immigration detention for
9 noncitizens during removal proceedings under Section 1226(a), and the Ninth Circuit has specifically
10 held that "Section 1226(a) offers *substantial* procedural protections to detained persons" and those
11 "procedures do not violate due process." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193 (9th Cir.
12 2022) (emphasis added).

13 Therefore, Petitioner is unlikely to succeed on the merits of his claim that the Constitution
14 requires more in his case. Any Court order further preventing DHS from exercising its lawful detention
15 authority would be improper because it would preempt the extensive procedural protections provided by
16 Section 1226(a). The Ninth Circuit's decision in *Rodriguez Diaz* controls the outcome in this case and
17 Petitioner is not entitled to notice beyond an arrest warrant before DHS can detain him pursuant to
18 Section 1226(a), or a "pre-detention" hearing before an immigration judge ("IJ"). The procedural
19 protections available under Section 1226(a), which allow for a detainee to promptly request a hearing,
20 provide constitutionally adequate protection against the risk of an erroneous deprivation of liberty.
21 Contrary to Petitioner's assertion, there need not be a change in circumstances for ICE to lawfully re-
22 detain a noncitizen following release on bond. Regardless, there were changed circumstances here
23 following Petitioner's conviction for driving under the influence and child endangerment.

24 Similarly, Petitioner has not met his burden of demonstrating a likelihood of irreparable harm
25 absent a preliminary injunction because there is no constitutional right to a pre-determination hearing.
26 Petitioner also fails to show that it is in the public interest to prevent the Executive from exercising its
27 enforcement authority under the Immigration and Nationality Act ("INA"). Especially where, as here,

1 detention of a repeat criminal offender would benefit the public safety. If Petitioner is re-arrested under
2 Section 1226(a), he could promptly challenge his detention at that time. The Constitution does not grant
3 Petitioner the extra protection of an additional hearing before he is arrested again. Accordingly, the
4 Court should deny the motion for a preliminary injunction.

5 **II. FACTUAL AND LEGAL BACKGROUND**

6 Petitioner is a native of Guatemala, who entered the United States unlawfully in 2003. ECF No.
7 1 at 5. On January 16, 2012, Petitioner was convicted of driving under the influence and sentenced to
8 six months in jail. Declaration of Julio G. Razalan ("Razalan Decl.") at ¶ 6. On March 28, 2013,
9 Petitioner was again convicted of driving while under the influence and sentenced to sixty-two days in
10 jail, three years conditional probation, and completion of an SB38 Program for repeat offenders. *Id.* at
11 ¶ 7. Following his conviction, Petitioner was issued a Form I-200 warrant for arrest and detained by
12 ICE on April 22, 2013. *Id.* at ¶ 8. That same day, ICE conducted a custody determination pursuant to
13 INA § 236(a) and released Petitioner under a \$2,000 bond. *Id.* Upon release, he was served with a
14 Notice to Appear, charging him with inadmissibility the United States for being present without being
15 admitted or paroled in violation of INA § 212(a)(6)(A)(i). *Id.*

16 On January 10, 2022, Petitioner was again convicted of driving while under the influence and
17 also for abusing or endangering the health of a child. *Id.* at ¶ 9. Petitioner was initially sentenced to 120
18 days in jail, restitution, and four years of probation. *Id.* However, on September 27, 2022, his probation
19 was revoked for violating the probation, and on October 13, 2022, his sentence was amended to include
20 additional days in jail and wearing an alcohol monitor for 15 days. *Id.*

21 On January 6, 2015, the IJ sustained the charge of removability and Petitioner then sought relief
22 from removal. *Id.* at ¶ 10. Petitioner's next hearing before an IJ is scheduled for December 1, 2025. *Id.*
23 Petitioner reported to ICE on July 14, 2025, pursuant to a Form I-340, Notice to Obligor to Deliver
24 Alien. *Id.* at ¶ 11. When Petitioner reported on July 14, 2025, ICE cancelled the bond, conducted a
25 custody determination due to Petitioner's most recent criminal convictions and detained Petitioner
26 pursuant to INA § 236(a). *Id.* at ¶ 12.

27 On July 14, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, stating causes of action
28

for violations of procedural and substantive due process under the Fifth Amendment, violation of the immigration statutes and regulations, and violation of a right to a fair hearing. ECF No. 1. The habeas petition seeks Petitioner's immediate release or, in the alternative, an injunction against ICE from detaining Petitioner unless and until a hearing can be held to determine whether detention is lawful. ECF No. 1 at 14. Petitioner then filed the instant Motion for Temporary Restraining Order and Preliminary Injunction seeking the same relief on an emergent basis. ECF No. 2. That same day, the Honorable Rita F. Lin granted the Temporary Restraining Order. ECF No. 5. Pursuant to the Order, Petitioner was released from custody on July 15, 2025. ECF No. 12.

III. LEGAL STANDARD

A. Detention of Noncitizens Under 8 U.S.C. § 1226(a)

The detention of a noncitizen pending removal proceedings is governed by 8 U.S.C. § 1226. *See Rodriguez Diaz*, 53 F.4th at 1194-95 (citing, *e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1226(a)). "'Except as provided in [§ 1226(c)]' the Attorney General 'may release' an alien detained under § 1226(a) 'on . . . bond' or 'conditional parole.'" *Id.*

By regulation, a detainee has specific procedural rights while detained under § 1226(a). "When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. The alien will be released if he 'demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.'" *Rodriguez Diaz*, 53 F.4th at 1196 (quoting 8 C.F.R. § 236.1(c)(8)) (internal citation omitted). Thereafter, "a detainee may request a bond hearing before an IJ at any time before a removal order becomes final." *Id.* (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). "On top of this, an individual detained pursuant to § 1226(a) may request an additional bond hearing whenever he experiences a material change in circumstances." *Id.* (citing 8 C.F.R. § 1003.19(e)).

When a noncitizen has been released on bond while their removal proceedings are pending,

§ 1226(b) provides that “[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” The implementing regulations provide that “such release may be revoked at any time in the discretion of” various ICE officials, without qualification. 8 C.F.R. § 236.1(c)(9); *see also In re Valles-Perez*, 21 I. & N. Dec. 769, 772 (B.I.A. 1997) (“[W]hen an alien has been released following a bond proceeding, a district director has continuing authority to revoke or revise the bond, regardless of whether the Immigration Judge or this Board has rendered a bond decision.”).

Once a noncitizen has had their bond or parole revoked under § 1226(b) and they are taken into custody, their detention is once again governed by § 1226(a) and its implementing regulations. Thus, until they are subject to a final order of removal, such an individual can request a bond hearing before an IJ and appeal an adverse bond decision to the BIA. *See In re Sugay*, 17 I. & N. Dec. 637, 639-40 (B.I.A. 1981) (“The alien may, as he did in this case, again appeal the amount of bond set by the District Director, thus assuring that the District Director does not act arbitrarily or capriciously.”).

B. Preliminary Injunctions

“A preliminary injunction is an extraordinary and drastic remedy.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (internal quotation marks and citation omitted). One should be awarded only upon a clear showing that the party is entitled to such relief. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Preliminary injunctions are “never awarded as of right.” *Winter*, 555 U.S. at 24.

A petitioner 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, a petitioner can show that there are “‘serious questions going to the merits’ and the ‘balance of hardships tips sharply towards’ [petitioner], 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). “[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). Petitioner’s burden is aptly described as a “heavy” one. *Earth Island Inst.*, 626 F.3d at 469.

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).

Accordingly, where a petitioner seeks mandatory injunctive relief—seeking to alter the status quo—“courts should be extremely cautious.” *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994). A mandatory injunction “goes well beyond simply maintaining the status quo *pendente lite* and is particularly disfavored.” *Stanley*, 13 F.3d at 1320 (internal quotations and alteration omitted). A mandatory injunction “should not be issued unless the facts and law clearly favor the moving party.” *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980). Mandatory injunctions “are not granted unless extreme or very serious damage will result and are not issued in doubtful cases[.]” *Anderson*, 612 F.2d at 1115. A party seeking a mandatory injunction “must establish that the law and facts *clearly* favor her position, not simply that she is likely to succeed.” *Garcia*, 786 F.3d at 740 (emphasis in original).

IV. ARGUMENT

A. Petitioner’s Claim Fails on The Merits

Petitioner’s claims rest on his argument that he cannot be returned to immigration detention absent changed circumstances and until he is afforded a hearing and the opportunity to pursue relief from removal. Section 1226(a) does not, however, provide for a pre-detention hearing. *See generally* 8 U.S.C. § 1226; 8 C.F.R. § 236(c)(9). Rather, “an ICE officer makes the initial custody determination,” which the noncitizen can later request to have reviewed by an IJ. *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of immigration detention without pre-detention hearings. *See, e.g., Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the INS procedures are faulty because they do not provide for automatic review by an immigration

judge of the initial deportability and custody determinations”); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the “impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.”).

Instead of being guaranteed *pre*-detention IJ review, noncitizens detained under Section 1226(a) are provided with multiple avenues to seek review of their detention *once they are in custody*—a process that the Ninth Circuit has held is constitutionally sufficient. *See Rodriguez Diaz*, 53 F.4th at 1213. The Constitution does not require that the government conduct another bond hearing prior to taking Petitioner into custody again, when he could promptly seek review of his detention if re-arrested.

Contrary to Petitioner’s assertion, ICE can re-arrest a noncitizen absent a change in circumstances. Petitioner relies on *In re Sugay*. However, the relevant portion of *Sugay* merely “recognize[d] counsel’s argument” in this regard, but did not hold that such changed circumstances were a requirement for re-arrest. *See* 17 I. & N. Decl. at 640; *see also Saravia v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) (“[T]he district court never held that *Sugay* requires these hearings.”). Other courts have recognized that *Sugay*’s dicta is not “binding on ICE.” *Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *16 n. 19 (S.D.N.Y. Dec. 27, 2018); *Salvador F.-G. v. Noem*, 25-cv-0243-CVE-MTS, 2025 WL 1669356, at *9 (June 12, 2025 N.D. Okla.) (“Nothing in the statute or regulation even hints at a change in circumstances requirement.”).

Regardless, here, there *was* a change in circumstances since Petitioner’s original detention in 2013. Specifically, Plaintiff was convicted in 2022 of driving under the influence and child endangerment. *See United States v. Cisneros*, No. 19-cr-00280-RS, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021) (arrest can be considered a change in circumstances even if there is no conviction or the arrest was not for a crime of moral turpitude). Therefore, even reading a change-in-circumstances requirement into the statute, Petitioner’s re-detention here was lawful.

1 **1. Under The *Mathews* Factors, No Additional Process Is Warranted**

2 Although Petitioner urges this Court to evaluate this case under the traditional *Mathews* factors,
 3 there is no need to undertake a *Mathews* analysis here, where Supreme Court's jurisprudence and other
 4 case law make clear that no additional process is necessary. Indeed, the Supreme Court has *never*
 5 utilized the *Mathews* multi-factor "balancing test" in addressing due process claims raised by
 6 noncitizens held in civil immigration detention, despite multiple opportunities to do so since the
 7 Supreme Court's *Mathews* decision in 1976. *See Rodriguez Diaz*, 53 F.4th at 1206 ("[T]he Supreme
 8 Court when confronted with constitutional challenges to immigration detention has not resolved them
 9 through express application of *Mathews*." (citations omitted); *id.* at 1214 ("In resolving familiar
 10 immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.")
 11 (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* multi-factor "balancing
 12 test"; while leaving open the question of whether the *Mathews* test applies to a constitutional challenge
 13 to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that
 14 "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in
 15 the immigration detention context." *Id.* at 1206.

16 In the event that the Court elects to analyze Petitioner's claim under *Mathews*, the Court should
 17 find, consistent with the analysis above, that Petitioner is not entitled to relief. Under *Mathews*, the
 18 Court considers three factors in evaluating a procedural due process claim: the plaintiff's private
 19 interest, the risk of erroneous deprivation without additional procedures, and the government's interest.
 20 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). All three factors weigh against the additional process
 21 requested here.

22 **(i) Petitioner Has No Heightened Liberty Interest in His Conditional**
 23 **Release**

24 Respondents recognize the "weighty liberty interests implicated by the Government's detention
 25 of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021).
 26 However, Petitioner's interest in his liberty *generally* does not mean that he possesses a separate or
 27 heightened liberty interest in the continuation of his conditional release. The Ninth Circuit has already

1 held that the liberty interest of an individual such as Petitioner is reduced by the fact that he is a
2 noncitizen in removal proceedings. *See Rodriguez Diaz*, 53 F.4th at 1206-08. “The recognized liberty
3 interests of U.S. citizens and aliens are not coextensive: the Supreme Court has ‘firmly and repeatedly
4 endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if
5 applied to citizens.’” *Id.* at 1206 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme
6 Court has explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress
7 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67,
8 79-80 (1976). Indeed, the Supreme Court has repeatedly “recognized detention during deportation
9 proceedings as a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523.

10 Further, consideration of the private interest also must account for the fact that a noncitizen
11 without lawful status in the United States is not simply asserting a right to be at liberty, but rather a right
12 to be at liberty in the United States. *Cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated
13 any presumption of release pending deportation, committing that determination to the discretion of the
14 Attorney General.”). The Court should not ignore the simple fact that Petitioner’s detention arose and
15 continues because of his choice to seek relief from removal. *See Rodriguez Diaz*, 53 F.4th at 1207-08.
16 Petitioner has had the benefit of process available under § 1226(a) and its regulations.

17 Petitioner argues that detention would necessarily interfere with his interest in a fair hearing,
18 ability to present his case, and right to counsel if he is transferred outside the jurisdiction. ECF. No. 2 at
19 14-15. The Attorney General has discretion, however, to determine the appropriate place of detention.
20 *Milan-Rodriguez v. Sessions*, No. 16-cv-01578-AWI, 2018 WL 400317, *10 (Jan. 12, 2018) (citing
21 *Rios-Berrios*, 776 F.2d 859, 863 (9th Cir. 1985) (“We wish to make ourselves clear. We are not saying
22 that the petitioner should not have been transported to Florida. That is within the province of the
23 Attorney General to decide.”)). And while the Court may review whether such discretion resulted in a
24 deprivation of rights, Petitioner has not shown how his detention would interfere with ability to present
25 his case or his access to counsel more than any other detainee. *See Milan-Rodriguez v. Sessions*, No. 16-
26 cv-01578-AWI, 2018 WL 400317, *10 (Jan. 12, 2018) (“There is nothing in the record to indicate that
27 Petitioner’s transfer was irregular or anything other than an ordinary incident of immigration
28

1 detention.”).

2 The government recognizes that any form of detention will implicate an individual’s liberty
3 interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for
4 wanting to remain out of custody. But those reasons do not change the fact that Petitioner’s status and
5 recidivism reduce his liberty interest here.

6 (ii) The Existing Procedures Are Constitutionally Sufficient

7 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of
8 Petitioner’s liberty here is minimal. As a general rule, noncitizens have no right to an IJ hearing *before*
9 they are detained for removal proceedings. Rather, “an ICE officer makes the initial custody
10 determination,” which the noncitizen can later request to have reviewed by an IJ. *Rodriguez Diaz*, 53
11 F.4th at 1196. The Supreme Court has long upheld the constitutionality of this basic process. *See, e.g.,*
12 *Flores*, 507 U.S. at 309 (rejecting procedural due process claim that “the INS procedures are faulty
13 because they do not provide for automatic review by an immigration judge of the initial deportability
14 and custody determinations”); *Abel*, 362 U.S. at 233-34 (noting the “impressive historical evidence of
15 acceptance of the validity of statutes providing for administrative deportation arrest from almost the
16 beginning of the Nation”); *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
17 procedure.”); *Wong Wing*, 163 U.S. at 235 (“We think it clear that detention or temporary confinement,
18 as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens,
19 would be valid.”).

20 Thus, instead being guaranteed *pre*-detention IJ review, noncitizens detained under § 1226(a) are
21 provided with multiple avenues to seek review of their detention *once they are in custody*—a process
22 which the Ninth Circuit has already held is constitutionally sufficient as applied to Petitioner. *See*
23 *Rodriguez Diaz*, 53 F.4th at 1196-97.

24 There is no dispute that, if Petitioner is again arrested by ICE, he can promptly request a hearing
25 before an IJ. *See, e.g.,* 8 C.F.R. §§ 236.1(d)(1), 1003.19. In other words, Petitioner asks the Court to
26 rule that the U.S. Constitution requires an additional round of pre-detention review in his case that is
27 plainly not required for noncitizens generally. The risk of erroneous deprivation of Petitioner’s already
28

1 reduced liberty interest that would result from his detention and potential transfer out of district would
 2 be minimal. The Ninth Circuit has already held that existing agency procedures sufficiently protect a
 3 detainee's liberty interest and mitigated the risk of erroneous deprivation. *Rodriguez Diaz*, 53 F.4th at
 4 1209. With the ability to immediately request a hearing, Petitioner is able to bring each of his concerns
 5 enumerated in his Motion to the IJ for consideration.

6 Courts have rejected the premise that the Constitution requires an extra hearing before a
 7 noncitizen can be re-arrested under § 1226(b). For example, Chief Judge Seeborg has held that "[t]he
 8 law does not require a hearing before arrest" where a noncitizen released from ICE custody had been
 9 picked up by the San Francisco Police Department for a gang-related assault. *United States v. Cisneros*,
 10 No. 19-cr-00280-RS, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021). Other courts around the
 11 country have similarly recognized that there is no "due process right to a pre-detention hearing where a
 12 noncitizen, subject to pending removal proceedings . . . is at risk of being re-detained after being at
 13 liberty for more than two years." *Reyes v. King*, No. 19 -cv-08674-KPF, 2021 WL 3727614, at *11
 14 (S.D.N.Y. Aug. 20, 2021); *accord F.G. v. Noem*, No. 25-cv-0243-CVE, 2025 WL 1669356, at *8 (N.D.
 15 Okla. June 12, 2025) ("On careful consideration of the statute, the implementing regulations, and the
 16 BIA's decisions in *Sugay* and *Valles-Perez*, the Court rejects petitioner's claim that the DHS has no
 17 authority to revoke a bond issued by an immigration judge.").

18 Congress has determined that the Executive Branch may detain noncitizens in removal
 19 proceedings without a pre-detention hearing, while permitting those individuals to seek review of their
 20 detention from an IJ once in custody. This Court cannot rewrite the statute to impose additional
 21 procedural requirements on this constitutionally sufficient framework. *See Rodriguez Diaz*, 53 F.4th at
 22 1193–94.

23 (iii) **The Government Has A Strong Interest In Detention Pending**
 24 **Removal**

25 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test
 26 "must account for the heightened government interest in the immigration detention context." *Rodriguez*
 27 *Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in
 28

1 *Rodriguez Diaz* recognized that “the government clearly has a strong interest in preventing aliens from
2 ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting
3 *Demore*, 538 U.S. at 518). “This is especially true when it comes to determining whether removable
4 aliens must be released on bond during the pendency of removal proceedings.” *Rodriguez Diaz*, 53
5 F.4th at 1208. “The government has an obvious interest in ‘protecting the public from dangerous
6 criminal aliens,’” and “[t]hrough detention, the government likewise seeks to ‘increas[e] the chance that,
7 if ordered removed, the aliens will be successfully removed.’” *Id.* (quoting *Demore*, 538 U.S. at 515
8 and 528). “Indeed, the Supreme Court has specifically recognized Congress’s determination that the
9 government has been unable to remove deportable criminal aliens because of its initial failure to detain
10 them.” *Id.* “For all these reasons, the government’s interests in this case are significant.” *Id.*

11 Here, Petitioner has been convicted of driving under the influence on three separate occasions, as
12 well as child endangerment. Such repeated violations absolutely pose a danger to the community. *See*
13 *Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016) (“Drunk drivers take a grisly toll on the Nation’s
14 roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in
15 property damage every year”); *Mitchell v. Wisconsin*, 588 U.S. 840, 844 (2019) (plurality opinion)
16 (noting “the country’s efforts over the years to address the terrible problem of drunk driving”);
17 *Ledezma-Cosino v. Sessions*, 857 F.3d 1042, 1047 (9th Cir. 2017) (en banc) (“Driving under the
18 influence is, self-evidently, a public harm.”). Therefore, the Government necessarily has a strong
19 interest in detaining a repeated offender such as Petitioner, who poses a danger to the public. *See*
20 *Rodriguez Diaz*, 53 F.4th at 1208.

21 Moreover, Petitioner’s request for an additional level of review would impose administrative and
22 resource burdens on the government that would frustrate its ability to make congressionally authorized
23 detention decisions. Congress has determined that the Executive Branch may detain noncitizens in
24 removal proceedings without a pre-detention hearing, while permitting those individuals to seek review
25 of their detention from an IJ once in custody. Every extra hearing before an IJ adds further congestion
26 to an already backlogged immigration-court system. It drains limited Executive Branch resources. The
27 government has a significant interest in avoiding these extra-regulatory burdens. Indeed, even in non-

immigration contexts, courts have recognized that pre-deprivation process may be unwarranted, particularly where there is a need for prompt government action. “The necessity of quick action can arise where the government has an interest in protecting public health and safety.” *Lamoreaux v. Kalispell Police Dep’t*, No. 16-cv-0089, 2016 WL 6078274, at *4 (D. Mont. Oct. 17, 2016) (citing *Mackey v. Montrym*, 443 U.S. 1, 17 (1979)), *report and recommendation adopted*, 2016 WL 6634861 (D. Mont. Nov. 8, 2016); *cf. Edmondson v. City of Boston*, No. 89-cv-0395-Z, 1990 WL 235426, at *2 (D. Mass. Dec. 20, 1990) (noting that “[i]n the context of an arrest . . . quick action is necessary and predeprivation process is, at best, impractical and unduly burdensome”). These practical public-safety considerations are especially acute in this case, given Plaintiff’s recidivism. *See Rodriguez Diaz*, 53 F.4th at 1194-95, 1208.

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

B. Petitioner Fails to Show Irreparable Harm

In addition to his failure to show a likelihood of success on the merits, Petitioner does not meet his burden of showing he will be irreparably harmed in the absence of a preliminary injunction. Petitioner claims that he will suffer a deprivation of constitutional rights if he is re-detained and transferred out of this jurisdiction. ECF No. 2 at 17. Petitioner’s speculative claimed injuries are “too tenuous” to support a preliminary injunction. *See Goldie’s Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Any injury that Petitioner asserts from his future potential detention is insufficient because it is well established that “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523; *see also, e.g., Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. Again, even if Petitioner were re-arrested, he would have the opportunity to promptly seek review of that detention in front of an IJ. Petitioner therefore cannot show that any injury he might suffer from the specific absence of a pre-detention hearing is “irreparable.”

Furthermore, the alleged infringement of Petitioner’s constitutional rights is insufficient when—as here—Petitioner fails to demonstrate “a sufficient likelihood of success on the merits of [his]

1 constitutional claims to warrant the grant of a preliminary injunction.” *Marin All. For Med. Marijuana*
 2 *v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc 'd Gen. Contractors of Cal., Inc.*
 3 *v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-
 4 cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner
 5 “assume[d] a deprivation to assert the resulting harm”).

6 Given his undisputed status as a noncitizen in removal proceedings, Petitioner cannot establish
 7 that lawfully authorized detention would cause him irreparable harm.

8 **C. Neither The Balance of Equities Nor Public Interest Favors Petitioner**

9 When the government is a party, the last two factors that Petitioner must establish to obtain a
 10 preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)
 11 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, for the same reasons that Petitioner has not
 12 shown the *Mathews* factors favor his requested additional process, Petitioner has not shown that a
 13 preliminary injunction barring his re-arrest without a hearing is in the public interest. To the contrary,
 14 the public interest lies squarely in detaining an individual that the government has found to be a danger
 15 to the community. *See Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024) (“Martinez was found to
 16 be a danger to the community and so his detention is clearly ‘reasonably related’ to the government’s
 17 interest in protecting the public.”). This is especially true where, as here, the individual is a repeated
 18 offender of driving while under the influence. A crime that is a direct threat to public safety. Detention
 19 would, therefore, serve the public interest and preserve the public’s safety.

20 Indeed, Petitioner’s motion ignores the public interest in application of immigration laws that the
 21 Supreme Court has long upheld. *See, e.g., Demore*, 538 U.S. at 523; *see also Stormans, Inc. v. Selecky*,
 22 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court “should give due weight to the serious
 23 consideration of the public interest” in enacted laws). Petitioner’s claimed harm to himself cannot
 24 outweigh this public interest in application of the law, particularly since courts “should pay particular
 25 regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger*
 26 *v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). Recognizing the availability of a
 27 preliminary injunction under such circumstances would permit any noncitizen who had been released by

an IJ to petition a federal district court for additional review, circumventing the comprehensive statutory scheme that Congress enacted.

Petitioner's reliance on his assumed constitutional entitlement to a pre-detention hearing and to remain in this jurisdiction during detention does not save his argument. 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 and protecting the public safety through detention of reoffenders. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in upholding the existing processes and permitting Petitioner to be re-detained without additional burdensome processes, while allowing Petitioner to then challenge his detention once he is in custody, is significant.

V. CONCLUSION

For the foregoing reasons, the Court should deny the preliminary injunction.

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Respectfully submitted,

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