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

12 Daniel Avila Marin,  
13  
14 Petitioner,  
15  
16 v.  
17 Pamela Bondi, *et al.*  
18  
19 Respondents.

No. CV-25-03251-PHX-SMB (JFM)

**RESPONSE IN OPPOSITION TO  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

20 Respondents Pamela Bondi, Attorney General of the United States, John Cantu,  
21 U.S. Immigration and Customs Enforcement Phoenix Field Office, Kristi Noem, Secretary  
22 of Department of Homeland Security (DHS), Luis Rocha, Warden, Florence Correctional  
23 Center, Todd M. Lyons, Acting Director, Immigration and Customs Enforcement (ICE)  
24 (Respondents), through undersigned counsel, respond in opposition to Petitioner's Motion  
25 for Temporary Restraining Order (TRO) and Preliminary Injunction (PI). Doc. 2. Petitioner  
26 is subject to a valid reinstated removal order who nevertheless seeks injunctive relief  
27 enjoining his continued detention and removal until "further order of this court." Doc. 2 at  
28 1. Because Petitioner's removal is likely in the reasonably foreseeable future, the Court  
should deny his request for injunctive relief. This Response in Opposition is supported by  
the following Memorandum of Points and Authorities and attached declaration.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. BACKGROUND.**

3 Petitioner Daniel Avila Marin (Petitioner) is a native and citizen of Mexico born on  
4  in Jalisco, Mexico. *See* Declaration of Nellie Martinez, Deportations Officer,  
5 attached as Exhibit A, at ¶ 3. Petitioner entered the United States without inspection near  
6 Calexico, California in 1981, and obtained lawful permanent resident status in 1989. *Id.* at  
7 ¶¶ 4-5. He was convicted of a felony, specifically possessing cocaine, before the California  
8 Superior Court on December 13, 1994. *Id.* at ¶ 6. Immigration and Naturalization Service  
9 (INS) placed him in deportation proceedings upon issuing him a Form I-221 Order to Show  
10 Cause (OSC) following his criminal conviction. *Id.* at ¶ 7. OSC charged him with having  
11 been convicted of a controlled substance offense under former section 241(a)(2)(B)(i) of  
12 the Immigration and Nationality Act (INA) and an aggravated felony under former section  
13 241(a)(2)(A)(iii) of the INA. *Id.* at ¶ 8. On October 29, 1997, an Immigration Judge (IJ)  
14 ordered Petitioner removed to Mexico. *Id.* at ¶ 9. On or around November 26, 1997, he  
15 appealed the IJ's decision to the Board of Immigration Appeals (BIA). *Id.* at ¶ 10.

16 BIA dismissed his appeal on March 22, 2002. *Id.* at ¶ 11. On November 5, 2013, he  
17 was removed to Mexico. *Id.* at ¶ 12. He reentered the United States without inspection on  
18 or around December 13, 2013. *Id.* at ¶ 13. That same day, on December 13, 2013, U.S.  
19 Border Patrol (USBP) issued him a Form I-871 Notice of Intent/Decision to Reinstate Prior  
20 Order. *Id.* at ¶ 14. The Form I-871 notified Petitioner that DHS was reinstating the  
21 deportation order issued on October 29, 1997. *Id.* at ¶ 14. He was subsequently removed  
22 to Mexico based on the reinstated deportation order on June 10, 2014. *Id.* at ¶ 15. On May  
23 15, 2024, USBP encountered Petitioner in Nogales, Arizona, after he made another illegal  
24 entry. *Id.* at ¶ 16. USBP issued him another Form I-871 Notice of Intent/Decision to  
25 Reinstate Prior Order, this time, charging him with violating section 241(a)(5) of the INA,  
26 8 U.S.C. § 1231(a)(5), as a noncitizen who has illegally reentered the United States after  
27 having been previously removed or deported voluntarily while under an order of exclusion,  
28 deportation or removal. *Id.* That day, he presented to the United States District Court for

1 the District of Arizona for violating 8 U.S.C. § 1325(a)(1), illegal entry and § 1326(a),  
2 illegal reentry and he transferred to the U.S. Marshals Service (USMS) custody. *Id.* He was  
3 convicted and sentenced to serve 120 days imprisonment with USMS. *Id.*

4 Petitioner was received into ICE custody, in Florence, Arizona, pending removal to  
5 Mexico, on September 12, 2024. *Id.* at ¶ 17. He claimed fear of returning to Mexico and  
6 ICE referred his case to an asylum officer for a reasonable fear interview the next day, on  
7 September 13, 2024. *Id.* at ¶ 18. On September 30, 2024, the asylum officer found that  
8 Petitioner had a reasonable fear of return to Mexico, and the case was referred to an IJ to  
9 allow him to pursue withholding-only proceedings, which was continued three times. *Id.*  
10 at ¶¶ 19-20. On March 10, 2025, the IJ denied his request for bond because his attorney  
11 withdrew the request for a bond. *Id.* at ¶ 21. On April 2, 2025, the IJ denied his applications  
12 for withholding of removal but granted him relief under the Convention Against Torture  
13 (CAT). *Id.* at ¶ 22. DHS did not file an appeal. *Id.* at ¶ 23.

14 As to the status of removal, ICE notified the ERO Removal Management Division  
15 (RMD) in Washington, DC, that Spain, Guatemala, and El Salvador were reached out for  
16 third country removal, per new guidance, on July 20, 2025. *Id.* at ¶ 24. ICE inquired with  
17 RMD in Washington, DC, on a follow up on third country removal status on August 17,  
18 2025. *Id.* at ¶ 25. From there, on September 2, 2025, ICE inquired with RMD in  
19 Washington, DC, about follow up on 3rd Country removal status. *Id.* at ¶ 26.

## 20 **II. TEMPORARY RESTRAINING ORDERS AND PRELIMINARY** 21 **INJUNCTIONS STANDARD.**

22 The standard for issuing a temporary restraining order is identical to the standard  
23 for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,  
24 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and  
25 is “an extraordinary remedy that may only be awarded upon a clear showing that the  
26 plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22  
27 (2008). Preliminary injunctions are “never awarded as of right.” *Id.* at 24. Preliminary  
28 injunctions are intended to preserve the relative positions of the parties until a trial on the  
merits can be held, “preventing the irreparable loss of a right or judgment.” *Sierra On-*

1 *Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary  
2 injunctions are “not a preliminary adjudication on the merits.” *Id.* A court should not grant  
3 a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success  
4 on the merits; (2) that the applicant is likely to suffer an irreparable injury absent  
5 preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public  
6 interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant  
7 must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22.

8 Where the government is a party, courts merge the analysis of the final two *Winter*  
9 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,  
10 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).  
11 Alternatively, a petitioner can show that there are “‘serious questions going to the merits’  
12 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and  
13 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d  
14 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-  
15 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in  
16 proving that they are entitled to this ‘extraordinary remedy.’ *Earth Island Inst. v. Carlton*,  
17 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s carries a “heavy” burden. *Id.*

18 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a  
19 party from taking action and preserves the status quo pending a determination of the action  
20 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,  
21 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party to  
22 take action. . . . A mandatory injunction goes well beyond simply maintaining the status  
23 quo pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory  
24 injunction is “subject to a higher degree of scrutiny because such relief is particularly  
25 disfavored under the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313,  
26 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be  
27 “extremely cautious” when issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740  
28 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied “unless

1 extreme or very serious damage will result,” and even then, not in “doubtful cases.” *Marlyn*  
2 *Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of*  
3 *Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740  
4 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts  
5 and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

### 6 **III. LEGAL FRAMEWORK.**

#### 7 **A. Reinstated Removal Orders and Withholding Only Proceedings.**

8 Congress has created an expedited process for aliens, like Petitioner, who  
9 unlawfully re-enter the United States, having already been removed after lengthy removal  
10 proceedings. The relevant statutory provision states:

11 “If the Attorney General finds that an alien has reentered the United States illegally  
12 after having been removed or having departed voluntarily, under an order of  
13 removal, the prior order of removal is reinstated from its original date and is not  
14 subject to being reopened or reviewed, the alien is not eligible and may not apply  
15 for any relief under this chapter, and the alien shall be removed under the prior order  
16 at any time after the reentry.”

17 8 U.S.C. § 1231(a)(5); *Johnson v. Guzman Chavez*, 594 U.S. 523, 529–30 (2021).

18 Section 1231(a)(5) applies to “all illegal re-entrants,” and it “explicitly insulates the  
19 removal orders from review,” while also “generally foreclos[ing] discretionary relief from  
20 the terms of the reinstated order.” *Id.* (internal citations omitted). It does not, however,  
21 preclude an alien from pursuing withholding-only relief to prevent DHS from executing  
22 his removal to the particular country designated in his reinstated removal order. *Id.*  
23 (internal citations omitted); *see also* § 1231(b)(3)(A).

24 “There are two paths for seeking withholding of removal. First, the alien may seek  
25 statutory withholding under § 1231(b)(3)(A), which provides that “the Attorney General  
26 may not remove an alien to a country if the Attorney General decides that the alien’s life  
27 or freedom would be threatened in that country because of the alien’s race, religion,  
28 nationality, membership in a particular social group, or political opinion.” Second, the alien



1 may seek withholding under regulations implementing the Convention Against Torture and  
2 Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, S.  
3 Treaty Doc. No. 100–20, 1465 U. N. T. S. 113, which prohibits removal of an alien to a  
4 country where the alien is likely to be tortured.” *Guzman Chavez*, 594 U.S. at 530–31  
5 (citing 8 CFR §§ 208.16–208.17, 1208.16–1208.17.)

6 The process for applying for withholding of removal depends on whether the alien  
7 is subject to standard removal proceedings or a reinstated order of removal. An alien  
8 subject to the standard removal process typically applies for withholding during the course  
9 of his regular removal proceedings. But because an alien subject to a reinstated order of  
10 removal does not have any removal proceedings, the process begins only if the individual  
11 expresses a fear to DHS of returning to the country of removal specified in the reinstated  
12 removal order. *Guzman Chavez*, 594 U.S. at 531 (citing §§ 208.31(a), 1208.31(a)). At that  
13 point, DHS will refer the individual to an asylum officer for a reasonable fear  
14 determination, which will normally be conducted within 10 days of the referral. *Id.* (citing  
15 §§ 208.31(b), 1208.31(b)). If the asylum officer concludes that the alien has a reasonable  
16 fear, he will refer the matter to an IJ for initiation of withholding-only proceedings. *Id.*  
17 (citing §§ 208.31(e), 1208.31(e)). Those proceedings are “limited to a determination of  
18 whether the alien is eligible for withholding or deferral of removal,” and as such, “all  
19 parties are prohibited from raising or considering any other issues, including but not limited  
20 to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other  
21 form of relief.” *Id.* (citing §§ 208.2(c)(3)(i), 1208.2(c)(3)(i)). The IJ’s final decision as to  
22 withholding can be appealed to the BIA. *Id.* (citing §§ 208.31(e), 1208.31(e)).

23 CAT protection does not alter whether an alien may be removed or their underlying  
24 removal order; it affects only the countries to which an alien may be removed. That is, a  
25 grant of CAT protection “means only that notwithstanding the order of removal, the  
26 noncitizen may not be removed to the designated country of removal, at least until  
27 conditions change in that country.” *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The  
28 United States remains free to remove that alien “at any time to another country where he

1 or she is not likely to be tortured.” *Id.* (citation omitted); see *INS v. Cardoza-Fonseca*, 480  
2 U.S. 421, 428 n.6 (1987). Ordinarily, an alien raises a CAT claim during removal  
3 proceedings under 8 U.S.C. § 1229a, where the immigration court decides both the alien’s  
4 removability and CAT claim together. See, e.g., 8 C.F.R. § 1240.1(a)(1)(iii), 1240.12(c);  
5 *Matter of I-S- & C-S-*, 24 I&N Dec. 432, 433-34 (BIA 2008). But sometimes, CAT claims  
6 arise outside of those removal proceedings. For instance, aliens subject to a reinstated order  
7 of removal—where the prior order of removal is restored—may nonetheless seek CAT  
8 protection in “withholding-only” proceedings. See *Johnson v. Guzman Chavez*, 594 U.S.  
9 523, 530 (2021). Likewise, aliens placed in expedited-removal proceedings are still able to  
10 raise CAT claims, and receive administrative procedures, the extent of which depends on  
11 the claim’s credibility. See, e.g., 8 C.F.R. § 235.3(b)(4).

12 If an alien is granted withholding-only relief, DHS may not remove the alien to the  
13 country designated in the removal order unless the order of withholding is terminated.  
14 *Guzman Chavez*, 594 U.S. at 531–32 (citing §§ 208.22, 1208.22. But because withholding  
15 of removal is a form of “country specific” relief, *INS v. Cardoza-Fonseca*, 480 U.S. 421,  
16 428, n. 6 (1987), nothing prevents DHS “from removing [the] alien to a third country other  
17 than the country to which removal has been withheld or deferred.” *Id.* (citing §§ 208.16(f),  
18 1208.16(f); see also §§ 208.17(b)(2), 1208.17(b)(2)).

19 In this case, Petitioner is subject to a reinstated final removal order—that is a  
20 removal order that is a result of the conclusion of removal proceedings where Petitioner  
21 had the opportunity to be heard on any claim to relief from removal anywhere in the world.  
22 In the case of reinstated removal orders, like the one in this case, because they are final  
23 orders under which much process was previously afforded during the full course of removal  
24 proceedings, there is limited process available for country specific relief from removal  
25 under a reinstated final order. Withholding of removal and CAT relief is a country specific  
26 relief. Here, Petitioner has only requested, and been granted, CAT relief as to Mexico. He  
27 is therefore currently unremovable to Mexico. As the Court held in *Guzman-Chavez*,  
28 “nothing prevents DHS “from removing [the] alien to a third country other than the country

1 to which removal has been withheld or deferred.”” *Guzman Chavez*, 594 U.S. at 531–32  
 2 (citing §§ 208.16(f), 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2)).

3 **B. The Nationwide Injunction in D.V.D. and the Supreme Court’s Stay.**

4 Petitioner is a *D.V.D* class member. Doc. 1 at 11. Petitioner’s claims seeking  
 5 additional, extra-statutory procedures prior to removal from the United States to a third  
 6 country are already being adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v.*  
 7 *Department of Homeland Security*, No. 25-cv-10676 (D. Mass.); *see also Clinton v. Jones*,  
 8 520 U.S. 681, 706 (1997) (noting that a district court “has broad discretion to stay  
 9 proceedings as an incident to its power to control its own docket). As part of district courts’  
 10 discretion to administer their docket, courts have dismissed, without prejudice, suits  
 11 brought by individuals whose claims are duplicative of class claims in other litigation. *See,*  
 12 *e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay  
 13 of Fifth Amendment challenge pending completion of pending class action).

14 Petitioner seeks Petitioner’s claims seeking to delay or otherwise prohibit his  
 15 removal to a third country until ICE complies with extra-statutory procedures substantially  
 16 overlap with the nationwide class action. On April 18, 2025, the court in *D.V.D.* certified,  
 17 pursuant to Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

18 All individuals who have a final removal order issued in proceedings  
 19 under Section 240, 241(a)(5), or 238(b) of the INA (including  
 20 withholding-only proceedings) whom DHS has deported or will deport on  
 21 or after February 18, 2025, to a country (a) not previously designated as  
 22 the country or alternative country of removal, and (b) not identified in  
 writing in the prior proceedings as a country to which the individual  
 would be removed.

23 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at  
 24 \*11 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL  
 25 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025  
 26 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S.*  
 27 *Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,  
 28 2025). Petitioner makes no mention of his class membership in his Petition or Motion.



1 Because the *D.V.D.* class was certified pursuant to Rule 23(b)(2), *see D.V.D.*, 2025  
 2 WL 1142968, at \*14, 18, and 25, membership in the class is mandatory with no opportunity  
 3 to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that  
 4 Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does  
 5 not even oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v.*  
 6 *Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at \*15 (N.D. Cal. Mar. 7, 2025)  
 7 (noting that “23(b)(2) class members have no opportunity to opt out”). The *D.V.D.* court  
 8 entered a nationwide preliminary injunction requiring DHS to comply with various  
 9 procedures prior to removing a class member to a third country. The Supreme Court stayed  
 10 that preliminary injunction pending the disposition of an appeal in the First Circuit and a  
 11 petition for a writ of certiorari. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).  
 12 The case remains pending.

### 13 **C. Standard Governing Detention of Aliens with Final Removal Orders.**

14 The detention, release, and removal of aliens subject to a final order of removal is  
 15 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.  
 16 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the  
 17 United States after an order of removal becomes final. During this “removal period,”  
 18 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been  
 19 removed and remains in the United States, his detention may be continued, or he may be  
 20 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3)  
 21 and (a)(6). Under this section, ICE may detain an alien for a “reasonable time” necessary  
 22 to effectuate the alien’s removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite  
 23 detention is not authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).  
 24 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable period  
 25 of detention for aliens, like petitioner, detained under section 1231(a). *See Zadvydas*, 533  
 26 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a detention period  
 27 of six months, that there is “good reason to believe that there is no significant likelihood of  
 28 removal in the reasonably foreseeable future.” *Id.* at 701.

1 If the alien makes that showing, the Government must then introduce evidence to  
 2 refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832,  
 3 839-40 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a  
 4 period reasonably necessary to secure removal. It should measure reasonableness primarily  
 5 in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment  
 6 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued  
 7 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

#### 8 **IV. A PRELIMINARY INJUNCTION IS NOT WARRANTED.**

9 A “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v. Geren*,  
 10 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only  
 11 “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*  
 12 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). As the Supreme Court has  
 13 articulated, “[a] stay is not a matter of right, even if irreparable injury might otherwise  
 14 result” but is instead an exercise of judicial discretion that depends on the particular  
 15 circumstances of the case. *Nken*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*,  
 16 272 U.S. 658, 672 (1926)).

##### 17 **A. Petitioner Cannot Establish a Likelihood of Success on the Merits.**

18 The Court should deny Petitioner’s Motion because Petitioner “must demonstrate  
 19 immediate threatened injury as a prerequisite to preliminary injunctive relief.” *Caribbean*  
 20 *Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The “possibility” of  
 21 injury is “too remote and speculative to constitute an irreparable injury meriting  
 22 preliminary injunctive relief.” *Id.* “Subjective apprehensions and unsupported predictions  
 23 . . . are not sufficient to satisfy a plaintiff’s burden of demonstrating an immediate threat  
 24 of irreparable harm.” *Id.* at 675-76. Petitioner claims that his detention violates his due  
 25 process rights under the Fifth Amendment and 8 U.S.C. § 1231. Doc. 1 at 13-14. Under  
 26 subsection VII(1)(b), captioned “Likelihood of Success on the Merits and Serious  
 27 Questions Going Forward,” Petitioner argues that “the INA and its applicable regulations  
 28 do not permit continual detention of Petitioner after he has been afforded immigration relief

1 and surpassed the 90-day removal allotment given under the INA.” *Id.* at 21.<sup>1</sup> Petitioner  
 2 claims that his detention also violates the APA, Suspension Clause, and creates a state-  
 3 created danger. Doc. 1.

4 **i. APA Claims.**

5 The APA permits judicial review of an agency action only if “there is no other  
 6 adequate remedy in a court[.]” *see* 5 U.S.C. § 704, which means that a federal court lacks  
 7 jurisdiction over an APA claim if another statute would allow a court to review the  
 8 allegedly unlawful agency action. *See Coos Cty. Bd. of Cty. Cm’rs v. Kempthorne*, 531 F.3d  
 9 791, 810 (9th Cir. 2008) (citing 5 U.S.C. § 704); *Brem-Air Disposal v. Cohen*, 156 F.3d  
 10 1002, 1004–05 (9th Cir. 1998) (“If a plaintiff can bring suit against the responsible federal  
 11 agencies under [another statute], this action precludes an additional suit under the APA.”  
 12 (quoting *Env’tl. Def. Fund v. Tidwell*, 837 F. Supp. 1344, 1356 (E.D.N.C. 1992))); *Trinidad*  
 13 *y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (“The writ of habeas corpus  
 14 historically provides a remedy to non-citizens challenging executive detention.”). Even if  
 15 his APA claims remain, the arbitrary and capricious standard “... is highly deferential,  
 16 presuming the agency action to be valid and affirming the agency action if a reasonable  
 17 basis exists for its decision.” *Crickon v. Thomas*, 579 F.3d 978, 982 (9th Cir.  
 18 2009) (internal quotation marks omitted). His APA claims lack merit.

19 **ii. Suspension Clause.**

20 Petitioner claims that his continued detention “without any opportunity for  
 21 meaningful judicial review violates the Suspension Clause.” Doc. 1 at 27. “The Suspension  
 22 Clause states, “the privilege of the writ of habeas corpus shall not be suspended, unless  
 23 when in cases of rebellion or invasion the public safety may require it.” U.S. Const., art. I,  
 24 § 9, cl. 2. Petitioner has not shown that he has been denied meaningful judicial review  
 25 sufficient to warrant a violation of the Suspension Clause. Once Petitioner was in ICE  
 26 custody pending removal following his prison sentence, ICE immediately referred his case

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27  
 28 <sup>1</sup> The U.S. Attorneys’ Office for the District of Arizona was served with an unfiled  
 copy of Petitioner’s Points and Authorities in Support of Ex Parte Motion for TRO/PI by  
 mail on September 15, 2025.

1 to an asylum officer for a reasonable fear interview the day after he made a fear claim to  
2 Mexico, on September 13, 2024. Ex. A at ¶ 18. On September 30, 2024, the asylum officer  
3 found that Petitioner had a reasonable fear of return to Mexico, and the case was referred  
4 to an IJ to allow him to pursue withholding-only proceedings, which was continued three  
5 times. *Id.* at ¶¶ 19-20. On March 10, 2025, the IJ denied his request for bond because his  
6 attorney withdrew the request for a bond. *Id.* at ¶ 21. On April 2, 2025, the IJ denied his  
7 applications for withholding of removal but granted him relief under the Convention  
8 Against Torture (CAT). *Id.* at ¶ 22. Petitioner has been afforded meaningful judicial review.

9 **iii. State-Created Danger.**

10 With no factual support and relying entirely on case law inapplicable to the habeas  
11 context, Petitioner alleges that he can “easily” show that the government acted with  
12 deliberate indifference. Doc. 1 at 29. To the extent this argument applies to habeas actions,  
13 there is no factual support suggesting the government placed Petitioner in danger or acted  
14 deliberately indifferent to his due process rights. *Kennedy v. City of Ridgefield*, 439 F.3d  
15 1055, 1062 (9th Cir. 2006). Petitioner is detained pursuant to a reinstated final order of  
16 removal. These claims also lack merit.

17 **iv. Due Process Claims.**

18 As to the detention period, although the Supreme Court in *Zadvydas* designated six  
19 months as a presumptively reasonable period of time to allow the government to remove  
20 an alien detained under 8 U.S.C. § 1231(a), an alien is not automatically entitled to release  
21 after six months of detention. *Id.* at 701 (“This 6-month presumption, of course, does not  
22 mean that every alien not removed must be released after six months. To the contrary, an  
23 alien may be held in confinement until it has been determined that there is no significant  
24 likelihood of removal in the reasonably foreseeable future.”) (emphasis added). The  
25 passage of time alone is insufficient to establish that no significant likelihood of removal  
26 exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118  
27 (W.D. Wash. 2002). In *Lema*, where the petitioner had been detained for more than a year,  
28 the district court held that the passage of time was only the first step in the analysis, and

1 that the petitioner must then provide good reason to believe that no significant likelihood  
2 of removal exists in the reasonably foreseeable future. *Id.*

3 Petitioner's length of detention, which is not prolonged, is governed by 8 U.S.C. §  
4 1231 and *Zadvydas*. Petitioner was received into ICE custody from USMS on September  
5 12, 2024, in Florence, Arizona, following his 120-day imprisonment. Petitioner's prior  
6 final removal order was reinstated pursuant to 8 U.S.C. § 1231(a)(5). Ex. A at ¶ 16. The  
7 only relief from removal available for those subject to reinstated final removal orders is  
8 withholding of removal to the country specified in the reinstated removal order. 8 U.S.C.  
9 § 1231(b)(3)(A). He remains removable however, to any country from which he did not  
10 claim a fear of return in his prior removal proceedings. *Guzman Chavez*, 594 U.S. at 531–  
11 32 (holding that “nothing prevents DHS “from removing [the] alien to a third country other  
12 than the country to which removal has been withheld or deferred.”).

13 At this time, there is no impediment to Petitioner's removal. He possesses a valid  
14 final executable order of removal, that only prevents removal to Mexico, because that is all  
15 he is eligible for pursuant to a reinstated final removal order. Petitioner cannot establish  
16 that there is no likelihood of his removal in the reasonably foreseeable future as required  
17 to prevail under *Zadvydas*. 533 U.S. at 701. As addressed above, removal to Spain,  
18 Guatemala, and El Salvador, are being considered. Ex. A at ¶ 24. Follow up regarding third  
19 party removal status occurred as recently as September 2, 2025. *Id.* at ¶ 26.

20 These recent developments and efforts indicate that Petitioner's removal is not  
21 indefinite as contemplated in *Zadvydas*. Thus, he cannot establish a likelihood of success  
22 on the merits under any of his alleged causes of action.

23 **B. Petitioner Cannot Establish Irreparable Harm.**

24 Under subsection VII(1)(a), Petitioner argues that he “faces continued detention  
25 against the ruling made for him by the Immigration Court, one that mandated a 90-day  
26 maximum. Continued detention and isolation from his friends [and] family, several of  
27 whom are US citizens, will have an immeasurable impact on Petitioner's physical and  
28 emotional wellbeing.” Doc. 1 at 20. To show harm, a movant must allege that concrete,



1 imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. Petitioner raises  
2 general allegations surrounding isolation and suffering that do not meet the particularized  
3 facts standard. Petitioner also cannot show irreparable harm as he is currently lawfully and  
4 mandatorily detained with efforts being made to effectuate his removal.

5 **C. The Public Interest and Balance of the Equities Favors the Government.**

6 Where the Government is the opposing party, the balance of equities and public  
7 interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party,  
8 courts “cannot simply assume that ordinarily, the balance of hardships will weigh heavily  
9 in the applicant’s favor.” *Id.* at 436 (citation and internal quotation marks omitted). Here,  
10 the public interest weighs in favor of denying the motion for a preliminary injunction.  
11 “Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v.*  
12 *Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest  
13 lies in the Executive’s ability to enforce U.S. immigration laws and to keep convicted  
14 criminal aliens detained pending execution of their removal orders. The public interest lies  
15 in keeping Petitioner mandatorily detained to effectuate removal which is the undergirding  
16 statutory purpose of 8 U.S.C. § 1231.

17 **V. CONCLUSION.**

18 For the reasons explained above, Petitioner’s Motion for Temporary Restraining  
19 Order and a Preliminary Injunction should be denied.

20 Respectfully submitted on September 18, 2025.

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