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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

LAP NEOU, Petitioner-Plaintiff, v. SERGIO ALBARRAN, *et al.*, Respondents-Defendants.	Case No. 3:25-cv-8034-JSC **RESPONDENTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Petitioner-Plaintiff Lap Neou ("Petitioner") is subject to a final order of removal. He is challenging the possibility that his due process rights will be violated in the future if Immigration and Customs Enforcement ("ICE") re-detains him under the procedural protections provided by regulation under 8 C.F.R. § 241.4(l). The district court should dismiss the petition and request for preliminary injunction for lack of habeas jurisdiction because Petitioner is challenging not his present custody but his future hypothetical detention, and for lack of subject matter jurisdiction under 8 U.S.C. § 1252(g) because Petitioner is challenging his potential re-detention to execute his removal order, and his fears that his constitutional rights might be violated are insufficient to overcome the jurisdictional bar under 8 U.S.C. § 1252(g).

To the extent the Court finds that it has jurisdiction, ICE is authorized to detain Petitioner pursuant to 8 U.S.C. §1231(a), the appropriate detention authority for aliens whose removal proceedings have concluded. Section 1231(a) does not require any pre-detention bond hearing. To the contrary, detention under Section 1231(a) is mandatory during an initial 90-day removal period, and permitted to continue, again with no statutory requirement of a bond hearing, for "a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). ICE's Post-Order Custody Review ("POCR") process provides an appropriate mechanism to guide re-detention decisions. Thus, Petitioner is not likely to succeed on the merits of his claim, and the Court should reject Petitioner's request for a preliminary injunction.

II. FACTUAL BACKGROUND

Petitioner-Plaintiff Lap Neou is a native and citizen of Cambodia. Dkt. No. 3 at 2; *see also* Declaration of Jennifer Ramirez ("Ramirez Decl.") ¶ 6. Petitioner was admitted to the United States as a lawful permanent resident on December 14, 1981. *See* Ramirez Decl. ¶ 6.

A. Prior Criminal History.

As early as 1995, Petitioner violated California state criminal laws numerous times, all while he was still a lawful permanent resident. Dkt. No. 3 at 6; *see also* Ramirez Decl. ¶ 6. On or about September 13, 1995, Petitioner was convicted for Taking a Vehicle without Owner's Consent, in violation of California Vehicle Code § 10851(a). Ramirez Decl. ¶ 7, Ex. B (Record of Arrests and Prosecutions). For that offense, Petitioner was sentenced to three years of probation and ninety days of jail. *Id.* On February 26, 1996, Petitioner was convicted of Battery in violation of California Penal Code § 242. *Id.* ¶ 8 & Ex. B. For that offense, Petitioner was sentenced to ten days of jail and two years of probation. *Id.* On December 28, 1998, Petitioner was convicted of Second-Degree Robbery in violation of California Penal Code § 211, with an enhancement under California Penal Code § 12022.53(b). *Id.* ¶ 9 & Ex. B. For that offense, Petitioner was sentenced to fifteen years of imprisonment. *Id.*

B. Petitioner's Immigration Proceedings, and Subsequent Detention and Release.

Following his release from the California Department of Corrections custody, on or about September 9, 2011, and in connection to his robbery conviction, Petitioner was placed in immigration detention because he was subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(B). Dkt. No. 3 at 6 (citing Dkt. No. 1-1 at 129). On September 27, 2011, the Department of Homeland Security ("DHS") placed Petitioner in removal proceedings by filing a Notice to Appear ("NTA") with the Immigration Court in Eloy, Arizona. Dkt. No. 1-1 at 53-54. The NTA charged Petitioner as being removable from the United States because of his conviction for second-degree robbery, an aggravated felony. *Id.*

On or about November 1, 2011, Petitioner admitted to the allegations in the NTA and conceded the charge of removability. Dkt. No. 1-1 at 56-57. The Immigration Judge sustained the charge of removal and ordered Petitioner be removed from the United States and returned to Cambodia. *Id.* Petitioner waived appeal of the Immigration Judge's order. *Id.*; *see also* Dkt. No. 3 at 6.

On or about December 23, 2011, Petitioner was released from ICE custody pursuant to 8 C.F.R. § 241.4. The Deportation Officer comments noted: "Due to the fact that the government of Cambodia has not scheduled any interviews for the immediate future as indicated by the Headquarters Travel Document (TDU), it is recommended that [Petitioner] be released on an Order of Supervision." Dkt. No. 1-1 at 137 (further noting that Petitioner cooperated with ICE in obtaining his travel document, had not received additional disciplinary reports since being in ICE custody, and also provided an address in the United States where he would reside if released).

C. Post-release Criminal and Immigration History

On or about August 21, 2025, the Alameda Superior Court vacated Petitioner's robbery conviction pursuant to California Penal Code § 1473.7(a)(1). Dkt. No. 1-1 at 70. Pursuant to those same proceedings, Petitioner entered a new plea, nunc pro tunc, to one count of first degree burglary in violation of CA Penal Code § 459 with a six year sentence; four counts of false imprisonment by menace in violation of CA Penal Code § 237 with a sentence of two years for each count; and one count of carrying a concealed firearm on the person in violation of CA Penal Code § 24500(a)(2) with a 364 day sentence. Dkt. No. 1-1 at 72-73. Per this negotiated disposition, the total term was 14 years and 364 days. *Id.* at 73. Pursuant to a stipulation, because Petitioner served a total of 5,474 days in custody, Petitioner was sentenced to credit for time served. *Id.*

On September 8, 2025, Petitioner reported for his check-in with ICE. Ramirez Decl. ¶ 14. At the conclusion of the appointment, ICE informed Petitioner that he must report for his next check-in on October 8, 2025, and bring a completed travel document application for Cambodia. *Id.*

Petitioner is a member of the class in *Chhoeun v Marin*, 442 F.Supp.3d 1233, 1251 (C.D. Cal. 2020). Pursuant to the permanent injunction in *Chhoeun*, Petitioner may not be re-detained unless he first receives a notice of re-detention at least 14 days before the proposed detention. Petitioner has not, to date, received written notice of proposed re-detention.

On September 11, 2025, Petitioner filed a motion to re-open his removal proceedings and a motion to stay his removal with the Immigration Court in Eloy, Arizona. *Id.* at ¶ 15. On September 19, 2025, DHS filed an opposition to both motions. *Id.* To date, the motions remain pending. *Id.*

D. Procedural History.

On September 22, 2025, Petitioner filed the instant petition for Habeas Corpus and motion for temporary restraining order. Dkt. Nos. 1 and 3. Petitioner raises two causes of action, for procedural and substantive due process. Dkt. No. 1 ¶¶ 52-59. Petitioner's procedural due process claim seeks to prevent the government from re-detaining Petitioner unless the government first provides a hearing before a neutral adjudicator, where Petitioner "bears the burden of proving he is not dangerous" and where "he would have the opportunity to rebut the government's evidence." *Id.* at ¶ 58. His substantive due process claim asserts that re-detention of Petitioner would violate his right to substantive due process. Concurrently with his habeas petition, Petitioner filed a Motion for Temporary Restraining Order ("TRO"). Dkt. No's. 1-2. Pursuant to stipulation, the motion was converted to a motion for preliminary injunction.

III. LEGAL STANDARDS

A. Detention of Aliens Under 8 U.S.C. § 1231(a).

Congress enacted a multi-layered statute that provides for the civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. ICE's authority to detain previously admitted aliens while removal proceedings are pending is generally governed by 8 U.S.C. § 1226. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018).

Once removal proceedings have concluded, detention is governed by a different detention authority: 8 U.S.C. § 1231(a). That provision governs the detention of an alien who has been ordered removed from the country—an individual subject to a "final order of removal." *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022); *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2284 (2021). Section 1231(a)(2) provides that the government "shall detain" the 'alien" for a 90-day "removal period," the commencement of which can be triggered by various events in the alien's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter—the "post-removal period"—the alien "may be detained beyond the [90-day] removal period" if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)), or removable on certain specified grounds, or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6); *Arteaga-Martinez*, 596 U.S. at 579; *Zadvydas v. Davis*, 533 U.S. 678, 688–89 (2001).

However, Section 1231(a) does not permit indefinite detention. Rather, the Supreme Court has held the government can detain aliens under Section 1231(a) only for "a period reasonably necessary to bring about that alien's removal from the United States"—presumptively six months. *Zadvydas*, 533 U.S. at 689. "After this six-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future ["SLRFF"], the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701; *see also* 8 C.F.R. § 241.13. Section 1231(a)(6) continues to authorize detention "until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 at 701.

When removal is not reasonably foreseeable, continued detention is no longer authorized, but "the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700 (citing 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5); *see also Aleman Gonzalez v. Barr*, 955 F.3d 762, 769–70 (9th Cir. 2020), *rev'd and remanded on other grounds sub nom. Garland v. Aleman Gonzalez*, 596 U.S. 543, (2022).

Continued detention and release during the post-removal period is governed by Post Order Custody Review ("POCR") Regulations. 8 C.F.R. § 241.4. The POCR Regulations provide for periodic custody reviews by ICE, at which the alien is afforded certain protections, "including the rights to receive written notice of the review, to submit information in writing to support release and to be assisted by any individual of his or her choosing in preparing or submitting information in response to the notice." *Diouf v. Napolitano*, 634 F.3d 1081, 1089–90 (9th Cir. 2011) ("*Diouf II*"); 8 C.F.R. § 241.4(h), (k). In addition, as often as once every three months between annual reviews, the detainee may submit a written request for release consideration based on a showing of material change. 8 C.F.R. §241.4(k)(2)(iii). An alien detained beyond the removal period under Section 1231(a)(6) shall, if released, "be subject to [certain] terms of supervision." *Arteaga-Martinez*, 596 U.S. at 579.

While Section 1231(a)(6) contemplates release pursuant to an order of supervision in appropriate cases, the POCR Regulations also authorize ICE, in its discretion, to re-detain an alien previously approved for release where warranted by changed circumstances. 8 C.F.R. § 241.4(*l*). Among other reasons, release may be revoked "when, in the opinion of the revoking official," "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien." 8 C.F.R. § 241.4(*l*)(2)(iii).

As noted above, detention during the 90-day removal period is mandatory; there is no entitlement to a bond hearing or discretionary relief. Nor does Section 1231(a) provide for a bond hearing for the alien to challenge his detention during the post-removal period. *See Johnson v. Guzman Chavez*, 141 S. Ct. at 2280; *Arteaga-Martinez*, 596 U.S. at 581.

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). "The Supreme Court has emphasized that preliminary injunctions are an 'extraordinary remedy never awarded as of right.'" *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citation omitted). To prove entitlement to a preliminary injunction, a petitioner must establish that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Court of Appeals for the Ninth Circuit recognizes a sliding scale test, under which a preliminary injunction may issue if the petitioner demonstrates "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff . . . assuming the other two elements of the *Winter* test are also met." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). The petitioner must adduce "substantial proof" and make a "'*clear showing*'" that preliminary equitable relief is warranted. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original).

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 before judgment. *Sierra On-Line, Inc. v. Phx. 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. Cal.*, 13 F.3d 1313, 1319–20 (9th Cir. 1994). 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). 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. 1979). Mandatory injunctions "are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* at 1115. Accordingly, the 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).

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A temporary restraining order or preliminary injunction is intended to preserve the status quo until the case can be judged on the merits. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

C. Habeas Corpus.

Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). In immigration cases, the federal courts' habeas jurisdiction is limited by 8 U.S.C. § 1252(a)(2)(B), which provides that "no court shall have jurisdiction to review" "decision[s]" for which the statute grants "discretion" to the Attorney General.

IV. ARGUMENT.

A. The Court Lacks Jurisdiction To Issue Injunctive Relief

1. The Court Lacks Habeas Jurisdiction Because Petitioner Is Not Challenging His Present Custody.

Habeas relief is an appropriate request when an individual is detained and requesting release from that detention. U.S. CONST. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) ("The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody "); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody."). An individual does not need to be in actual physical custody to seek habeas relief; the "in custody" requirement may be satisfied where an individual's release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted "custody" for habeas purposes).

Even if Petitioner were to meet the "in custody" requirement because he may be subject to certain conditions of release—such as reporting to an ICE office—this habeas petition does not purport to challenge that custodial arrangement or secure his release from any present "custody." Petitioner is not in physical custody and is not challenging whatever restraints ICE has currently imposed. Rather, Petitioner seeks an injunction to prevent his future arrest, the possibility of future detention, and removal from the

United States. Thus, Petitioner does not seek a remedy that sounds in habeas. *See J.P. v. Santacruz, et al.*, No. 25-cv-1640 (C.D. Cal. Aug. 27, 2020), Dkt. No. 20. In *J.P.*, the court held that even assuming that ICE's order of supervision ("OSUP") satisfied the "in custody" requirement, "Petitioner fails to adequately demonstrate he is challenging his confinement." The court specifically noted that challenges to *future* detention did not fall within habeas jurisdiction:

> Here, Petitioner does not challenge the lawfulness of his alleged custody. . . . Rather, Petitioner challenges his *potential* confinement absent a pre-deprivation hearing before a neutral adjudicator. . . . Petitioner's concern about re-detention stems from Respondents indication that they *may possibly* re-detain Petitioner at a future in-person appointment that the ISAP scheduled. . . . Based on the record in this case, the court would not find that Petitioner adequately demonstrates a challenge to his custody.

Petitioner's claim here similarly challenges his hypothetical future confinement, not his present "custody," and therefore habeas jurisdiction is inappropriate.

2. The Court Lacks Jurisdiction Under 8 U.S.C. § 1252(g).

This petition arises out of the prospective execution of a removal order, which became final in 2011. Dkt. No. 1-1 at 56-57. Petitioner is currently subject to a final removal order; he is not merely in removal proceedings. To the extent he contests the decision to enforce that order through arrest, that challenge runs afoul of 8 U.S.C. § 1252(g), which strips district courts of jurisdiction over "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." Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review over habeas claims arising from the execution of removal orders, including challenges by aliens re-detained for removal. *See Rauda v. Jennings*, 55 F.4th 773, 776–77 (9th Cir. 2022).

In *Rauda*, the court found that the plain text of § 1252(g) stripped the court of jurisdiction to review the Attorney General's decision or action to execute removal orders against any alien. *Id.* The Court explained that the petitioner was not deprived of any rights considering his "motion to reopen has already been filed, and is currently pending before the BIA. Once the BIA decides that motion, [petitioner] will be able to file a petition for our court to review that final agency action—including review of the BIA's denial of his request for a stay of removal pending its decision." *Id.* ("No matter how [Petitioner] frames it, his challenge is to the Attorney General's exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review."). *See Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025) (affirming ICE's discretionary authority to decide "when" or "whether" to execute a removal order); *see also Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("we do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order." (emphases in original)).

Likewise, 8 U.S.C. § 1252(b)(9) states that if a claim "aris[es] from any action taken or proceeding brought to remove an alien," then review of the claim "shall be available only in judicial review of a final order." *See Tazu v. Att'y Gen. United States,* 975 F.3d 292, 299 (3d Cir. 2020) ("Here, by contrast, Tazu's re-detention challenge *is* directly about removal. So whether we analyze it under § 1252(g) or § 1252(b)(9), the outcome is the same: the District Court lacked jurisdiction to hear it."). Re-detention of an alien for purposes of removal constitutes an enforcement mechanism of a removal order, and district court lacks jurisdiction to hear it. *Id.* (noting § 1252(b)(9) does not foreclose all claims by an immigration detainee, such as the length of his confinement).

Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all" claims arising from deportation proceedings to a court of appeals in the first instance. *Reno v. Am.-Arab Anti-Discrimination Comm.,* 525 U.S. 471, 483 (1999). Under Ninth Circuit law, "[t]aken together, §[§] 1252(a)(5) and [(b)(9)] mean that any issue— whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and- practices challenges, through the PFR process whenever they 'arise from' removal proceedings").

Here, Petitioner is not challenging his current detention. Instead, he is challenging his potential future re-detention, which would be for the purpose of executing his removal. As Petitioner acknowledged, ICE instructed him to return with a completed Cambodian visa application. Dkt. No. 3 at 9. In these circumstances, the district courts do not have jurisdiction to review the prospective revocation of order of supervision for removal purposes. *See Ketsoyan v. U.S. Dep't of Just.*, No. 19-cv-1198, 2019 WL 4261881, at *6 (C.D. Cal. July 2, 2019). In *Ketsoyan*, ICE issued the petitioner a "final" reporting date, and he feared he would be arrested at this check-in before he could reopen his removal proceedings. *Id.* at *4. Rejecting petitioner's challenge, the court concluded Section "1252 strips the Court of jurisdiction over Plaintiffs' immigration claims." *Id.* The court explained, "Plaintiffs *are* challenging potential detention pursuant to removal; there is accordingly no jurisdiction." *Id.* (emphasis in original). The court found it significant that the petitioner, like Petitioner here, was challenging his *future* detention: "Mr. Ketsoyan's fears that [his unlawful detention] may take place in the future are insufficient to overcome the jurisdictional bar of § 1252(g)." *Id.* at *4. As in *Ketsoyan*, Petitioner here seeks to effectively block his arrest to execute his removal. Accordingly, review of his claims are precluded by these jurisdiction-stripping provisions.

B. Petitioner's Due Process Claim Fails on the Merits.

Petitioner argues that he cannot be returned to immigration detention unless the government first proves to an immigration judge, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community. Much of Petitioner's argument relies on authorities that address ICE's unilateral ability to revoke a bond issued under 8 U.S.C. § 1226(a). But Petitioner is not subject to Section 1226(a) and was not released on bond. Rather, any detention of Petitioner would be governed by 8 U.S.C. §1231(a), a materially different detention framework that specifically authorizes re-detention without pre-deprivation process. The extra-regulatory, pre-detention hearing that Petitioner is asking this Court to engraft upon this framework is not required by the Due Process Clause of the Constitution.

1. Petitioner's Requested Relief Exceeds What Is Required Of The *Chhoeun* Injunction.

Petitioner remains subject to a final order of removal. As noted above, following his robbery conviction, Petitioner was placed Petitioner in removal proceedings. The Immigration Judge sustained the charge of removal and ordered that Petitioner be removed from the United States and returned to Cambodia. That removal order remains valid.[1]

Petitioner avers he is a *Chhoeun* class member and is entitled to the protection of the *Chhoeun*

[1] Petitioner has a pending motion to reopen his removal proceedings and to stay his removal. Notwithstanding those motions, the order of removal remains valid. Unless and until those motions are granted, Petitioner is removable from the United States.

injunction. Dkt. No. 3 at 8; *see also Nak Kim Chhoeun, et. al v. David Marin, et al.*, 442 F. Supp. 3d 1233, 1251 (C.D. Cal. 2020). *Chhoeun* was a class action brought by Cambodian nationals subject to removal orders who had been released and living in the United States. The final injunction in *Chhoeun* requires the government to give notice before re-detaining any class member for purposes of removal. Class members are defined in the injunction:

> The class consists of all Cambodian nationals in the United States who are subject to final orders of deportation or removal, and were subsequently released from ICE custody, and have not subsequently violated any criminal laws or conditions of their release, and have or may be re-detained for removal by ICE.

Id. The injunction further explains that "[n]otice must be served on each Class Member at least 14 days before re-detention." *Id.* This notice must have specific phrasing[2] and include supporting documentation.[3] *Id.* Notice of the injunction, including supporting documents, must be served on the class member and on class counsel. *Id.*

The government does not contest that Petitioner is part of the *Chhoeun* class, or that he is entitled to the relief in the form of notice delineated in the injunction order. However, the order does not support Petitioner's requested relief for a preliminary injunction. *See generally* Dkt. No. 1-1 at 121-23. Rather, its plain text serves as a reminder that an alien remains subject to removal. Indeed, Petitioner concedes that precise point: "The *Chhoeun* injunction . . . does not require the pre-deprivation hearing Mr. Neou seeks through this action . . . If it becomes necessary, Mr. Neou will seek enforcement of the *Chhoeun* injunction before the *Chhoeun* court." Dkt. No. 3 at 8, n.1. In any event, as explained below, any re-detention of Petitioner is authorized by law.

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[2] "You are subject to a final removal order. U.S. Immigration and Customs Enforcement (ICE) intends to re-detain you for the execution of your final removal order and removal to Cambodia no earlier than 14 days from the date of this Notice." Dkt. No. 1-1 at 122.

[3] "Notice must include copies of (1) the class member's charging documents in immigration court, (2) the removal order, and (3) to the extent such documents are in the possession of ICE and were relied upon by ICE in connection with a removal order, the criminal conviction records upon which the removal order rests." Dkt. No. 1-1 at 122.

2. Any Re-Detention of Petitioner Is Authorized By Federal Law And Governed By The Post-Order Custody Review Regulations.

Petitioner's detention authority is 8 U.S.C. § 1231(a). Petitioner acknowledges that he is subject to a Final Administrative Order of Removal, issued by ICE on November 1, 2011, pursuant to 8 U.S.C. § 1231(a)(6). Dkt. No. 3 at 6; *see also* Dkt. No. 1-1 at 53-57. Although he filed motions to stay removal and to reopen and terminate his immigration proceedings which remain pending as of the date of this filing, Petitioner remains subject to the final removal order. Accordingly, Petitioner remains in the post-order removal period, and any detention would be governed by Section 1231, not Section 1226. *Johnson*, 594 U.S. at 542.

Significantly, Section 1231(a), unlike Section 1226(a), not only authorizes but mandates detention without a pre-detention bond hearing. Section 1231(a) detention—during both the 90-day removal period and during the post-removal period—is constitutionally permissible, without any pre-deprivation process. *Zadvydas*, 533 U.S. at 688–89; *Diouf II*, 634 F.3d at 1088. It is the duration, not the fact, of post-removal-period detention under Section 1231(a) that may raise constitutional concerns. *See Zadvydas*, 533 U.S. at 690; *Diouf II*, 634 F.3d at 1086. Even where removal is not reasonably foreseeable, the Supreme Court in *Zadvydas* recognized that release should be subject to appropriate conditions of release, "and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700. Nothing in the *Zadvydas* Court's decision suggests that the alien would be entitled to a pre-detention hearing before his Section 1231(a) detention could be resumed—indeed the Court's "no doubt" language signals just the opposite.

An alien seeking to challenge ICE's determination is not without procedural protections. ICE's POCR Regulations set forth detailed procedures that ICE must follow when it seeks to return an alien to custody for violation of the conditions of release. 8 C.F.R. § 241.4(*l*). Specifically:

- "The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section.." 8 C.F.R. § 241.4(*l*)(2). Release may be revoked where: (i) "[t]he purposes of release have been served;" (ii) "The alien violates any condition of release;" (iii) "It is appropriate to enforce a removal order or to commence removal proceedings against an alien;" or (iv) "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(*l*)(2) (emphasis added).

- The revocation will be subject to a review process commencing "with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.4(*l*)(3).

These regulations provide Petitioner with meaningful procedural protections. Justice Sotomayor, in her Statement Respecting the Disposition of the Application in *Noem v. Abrego Garcia*, specifically identified 8 C.F.R. §241.4(*l*) as part of the "[f]ederal law governing detention and removal of immigration" that continues to be binding on ICE. *Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Statement of Sotomayor, J.). Describing these requirements, Justice Sotomayor wrote that "in order to revoke conditional release, the Government must provide adequate notice and 'promptly' arrange an 'initial informal interview . . . to afford the alien an opportunity to respond to the reasons for the revocation stated in the notification." *Id.*

But significantly, these procedures do not require any pre-revocation hearing. Detention in these circumstances is a resumption of post-removal-period detention under Section 1231(a), which is constitutionally permitted without a pre-detention hearing. For this Court to find in favor of Petitioner on the merits, it would need to conclude that the procedural protections to which Petitioner would be entitled under 8 C.F.R. §241.4(*l*) are constitutionally insufficient. Petitioner has not established that these provisions are facially or as-applied unconstitutional, and Respondents are aware of no case, in this District or elsewhere, so holding. Indeed, Justice Sotomayor's statement in *Abrego Garcia* signals just the opposite: her citation of 8 C.F.R. § 241.4(*l*) implies approval of these procedural protections. Notably missing from her description of the regulation was any suggestion that these procedures are insufficient or that an extra-regulatory pre-revocation hearing before an immigration judge would be constitutionally required. Moreover, as a general matter, the Ninth Circuit has acknowledged that "it remains undetermined whether the Due Process Clause requires additional bond procedures under *any* immigration detention statute." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022).

In short, the Supreme Court has held that detention of aliens subject to a final order of removal under 8 U.S.C. §1231(a)(6) is constitutional, without any pre-detention process. The absence of any additional process is a policy decision, not a constitutional defect. The Court should decline Petitioner's invitation to write an additional procedural step into the existing process.

3. The Court Does Not Need To Undertake A *Mathews* Analysis Here.

For the reasons explained above, the Court should find that the detention of aliens subject to a final order of removal pursuant to 8 U.S.C. § 1231(a)(6) is constitutional, without any pre-detention process. *Zadvydas* establishes that detention under Section 1231(a)(6) without any pre- or post-custodial bond hearing is constitutionally permissible. The Court in *Arteaga-Martinez* reaffirmed this basic framework of Section 1231(a)(6) detention, rejecting any attempt to engraft an extra-statutory bond requirement onto the clear statutory language. Although Petitioner urges this Court to evaluate this case under the traditional *Mathews* factors, *see Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), there is no need to undertake a *Mathews* analysis here, where Supreme Court's jurisprudence and other case law make clear that no additional process is necessary. Indeed, the Supreme Court has *never* utilized the *Mathews* multi-factor "balancing test" in addressing due process claims raised by aliens held in civil immigration detention, despite multiple opportunities to do so since the Supreme Court's *Mathews* decision in 1976. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.") (citations omitted); *id.* at 1214 ("In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* multi-factor "balancing test"; while leaving open the question of whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206.

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

(i) Petitioner Has No Heightened Liberty Interest In His Conditional Release

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

As a general matter, Petitioner's liberty interest is reduced by the fact that he is an alien subject to a final order of removal. "The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz*, 53 F.4th at 1206 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. The government recognizes that any form of detention will implicate an individual's liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But the Constitution does not require the government to acquiesce to an individual's unreasonable expectations. The resolution of the *Chhoeun* class action—requiring a 14-day notice as a reminder that the alien is subject to removal and can be re-detained and removed at any time—addresses any heightened liberty interest that Petitioner may have had in his continued release.

In this case, when a valid removal order is issued, there is not a protected liberty interest in remaining free from detention by imposing a special process that prevents the government from electing to revoke a supervised release. The government is authorized to revoke such release pursuant to 8 CFR § 241.1(*l*). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(*l*) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

(ii) The Existing Procedures Are Constitutionally Sufficient.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal. First, as a general rule, aliens have no right to a hearing before an immigration judge before they are detained under Section 1231(a)(6). The constitutionality of that provision—which, permits detention without any bond hearing for a presumptively reasonable period of six months, is well established.

Second, as described above, any re-detention is subject to the POCR regulations. Thus, his release will be revoked only if certain conditions have been met, including a determination that detention "is appropriate to enforce a removal order or to commence removal proceedings against an alien." 8 C.F.R. § 241.4(*l*)(2)(iii).

Third, to the extent Petitioner is detained, he will be subject to the POCR procedural protections. 8 C.F.R. § 241.4(*l*)(3). This procedure provides both a timeline for the review of Petitioner's detention and an opportunity for Petitioner to challenge his detention within approximately three months.

Fourth, Petitioner would be entitled to a 90-day and 180-day custody review. 8 C.F.R. § 241.4(k). In connection with the review, a detainee would have the right "to receive written notice of the review, to submit information in writing to support release and to be assisted by any individual of his or her choosing in preparing or submitting information in response to the notice." *Diouf v. Napolitano*, 634 F.3d 1081, 1089 (9th Cir. 2011) (citing 8 C.F.R. § 241.4(h)(1)-(2)). Thereafter, Petitioner would be entitled to annual custody reviews, and may additionally request custody review as often as once every three months upon a showing of material change in circumstances. 8 C.F.R. § 241.4(k)(2)(iii).

The Constitution does not require the extra-regulatory level of review that Petitioner seeks here to avoid the possibility of an erroneous deprivation of liberty: "the Due Process Clause does not mandate procedures that reduce the risk of erroneous deprivation to zero." *Rodriguez Diaz*, 53 F.4th at 1213 (quoting *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982)) (further expanding that "[t]he role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy").

(iii) The Government Has A Strong Interest In Returning Removable Aliens To Custody

Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "The government has an obvious interest in 'protecting the public from dangerous criminal aliens,'" and "[t]hrough detention, the government likewise seeks to 'increas[e] the chance that, if ordered removed, the aliens will be successfully removed.'" *Id.* (quoting *Demore*, 538 U.S. at 515 and 528). "For all these reasons, the government's interests in this case are significant." *Id.*

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). This public interest outweighs Petitioner's private interest here.

Moreover, Petitioner's request for an additional level of review would impose administrative and resource burdens on the government that would frustrate its ability to make congressionally authorized detention decisions and interfere with the ability of the immigration courts to undertake its other important duties. Every extra hearing before an immigration judge adds further congestion to an already backlogged immigration court system. It drains limited Executive Branch resources. The government has a significant interest in avoiding these extra-regulatory burdens.

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

C. Petitioner Fails to Show Irreparable Harm.

Next, Petitioner does not meet his burden of showing he will be irreparably harmed in the absence of a preliminary injunction. Petitioner primarily claims two categories of injury if he is not afforded a hearing before he is arrested again: (1) separation from his family; and (2) alleged deprivation of constitutional rights. Dkt. No. 3 at 14-15. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (internal citation omitted). "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." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury. But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all aliens seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

The Supreme Court has explained that "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable, as some courts have said." *Nken v. Holder*, 556 U.S. 418, 435 (2009) (vacating the judgement of the Court of Appeals and remanding for consideration of Petitioner's motion for a stay). In this case, 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). Petitioner's claimed injuries regarding harm to him and his family arise from possible ***detention***, not from the absence of hearing before a neutral adjudicator, the crux of his requested relief. Dkt. No. 1 at 11-12 (emphasis added). He offers no explanation for how those claimed injuries would be prevented by a preliminary injunction, which—even if granted—could still result in his re-detention following notice and a hearing.

The injury that Petitioner asserts from his future potential detention is also insufficient because it is well established that he would have the opportunity to promptly seek review of that detention during the first three months, and would be entitled to have a bond hearing after six months. *Diouf II* recognized that this relatively short period of detention is not constitutionally problematic. Petitioner therefore cannot show that any injury he might suffer from the specific absence of a *pre*-detention hearing is "irreparable."

Finally, 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] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)). Petitioner is an alien subject to a final order of removal and cannot establish that lawfully authorized detention would cause him irreparable harm.

D. Neither the Balance of Equities Nor Public Interest Favors Petitioner.

When the government is a party, the last two factors that Petitioner must establish to obtain a preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, for the same reasons that Petitioner has not shown the *Mathews* factors favor his requested additional process, Petitioner has not shown that a preliminary injunction barring his re-arrest without a hearing is in the public interest.

Indeed, Petitioner's motion ignores the public interest in application of immigration laws that the Supreme Court has long upheld. *See, e.g., Demore*, 538 U.S. at 523; *see also Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws). Petitioner's alleged harm to himself and his family cannot outweigh this public interest in application of the law, particularly since courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). Recognizing the availability of a preliminary injunction under such circumstances would permit any alien who had been released to petition a federal district court for additional review, circumventing the comprehensive statutory scheme that Congress enacted.

Further, Petitioner's reliance on his assumed constitutional entitlement to a pre-detention bond hearing is unavailing. While true that "public interest concerns are implicated when a constitutional right has been violated," if, as here, the Petitioner has not shown a likelihood of success on the merits of his alleged constitutional claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). As it stands, Petitioner is subject to a final order of removal. The public and governmental interest in upholding the existing regulatory scheme and permitting Petitioner to be re-detained without additional burdensome processes, while allowing Petitioner to challenge his detention once he is in custody, is significant.

V. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's motion for preliminary injunction

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Respectfully submitted,

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/s/

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