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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JOAO ALEXANDRES DOS REIS FRANCO, Petitioner v. CRAIG MEYER, et al., Respondents.	No. 25-cv-09480-EKL **RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND RETURN TO PETITION FOR HABEAS CORPUS**

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I. INTRODUCTION

Petitioner Joao Alexandres Dos Reis Franco was admitted to the United States in January 2020 on a B-1 visitor visa. That temporary visa expired, but Petitioner remained in the United States. He has been living in this country without lawful status since the expiration of his visa. While Petitioner insists that his pending Form I-485 application for adjustment of status based on his marriage to a United States citizen confers lawful status and insulates him from removal proceedings, that is not the law in the Ninth Circuit. To the contrary, binding Ninth Circuit precedent confirms that a pending application for adjustment of status does not confer lawful immigration status on an applicant, and does not affect his removability. *Ayanian v. Garland*, 64 F.4th 1074, 1082 (9th Cir. 2023); *also United States v. Latu*, 479 F.3d 1153, 1155 (9th Cir. 2007). Under the Immigration and Naturalization Act ("INA"), the Department of Homeland Security ("DHS") therefore was entitled to initiate removal proceedings against Petitioner and, upon an issuance of a warrant, detain him under 8 U.S.C. § 1226(a) pending a decision on whether he is to be removed. DHS exercised its discretion to do precisely that on November 3, 2025.

Notwithstanding this clear statutory authority, Petitioner argues that his detention is improper and seeks to be released from custody. He has also filed an emergency motion for a temporary restraining order, asking this Court to (1) enjoin the United States Citizenship and Immigration Services ("USCIS") from denying his I-485 application; (2) prevent Respondents from transferring and removing him; and (3) order his immediate release. This requested TRO goes well beyond the relief sought in his habeas petition and exceeds the scope of this Court's jurisdiction. Federal immigration law imposes strict channeling provisions and jurisdictional limitations. Congress enacted those statutory limitations to prevent the misuse of District Courts to mount collateral attacks on Immigration Court proceedings. For example, pursuant to 8 U.S.C. § 1252(g), there is no jurisdiction in District Court to contest the government's decision to initiate removal proceedings on the theory that the alien is "not deportable." *See Pham Huu Duc v. U.S.*, 2014 WL 4273252 (C.D. Cal. Aug. 28, 2014). Thus, to the extent that Petitioner is arguing that the government cannot initiate removal proceedings or detain him because he is in lawful status and not removeable, these are not cognizable claims that this Court can entertain. Similarly, the procedural path to contest and appeal any claimed deficiencies in a Notice to Appear

("NTA") does not go through the District Court. It goes to the Immigration Court, then the Board of Immigration Appeals ("BIA"), and then the Circuit Court. *See Pereira v. Sessions*, 585 U.S. 198 (2018). Petitioner will have an opportunity to present these arguments to the immigration court, beginning with his first master calendar appearance, which is scheduled for November 17, 2025.

Finally, to the extent that Petitioner argues that he was denied an opportunity to challenge his custody determination before an impartial adjudicator, his habeas claim is not cognizable because he has not exhausted his administrative remedies through the "substantial procedural protections" available under Section 1226(a). *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Petitioner cannot be heard to complain that he has been denied an opportunity to be heard before a neutral adjudicator when an individualized bond hearing is available to him upon request. Petitioner should not be granted the relief sought here before being required to seek that relief in his administrative proceedings.

II. FACTUAL BACKGROUND

A. Petitioner's Lawful Entry, Overstaying of Visa, and Pending Application for Adjustment of Status.

Petitioner is a native and citizen of Brazil who was admitted to the United States on a B-2 visitor visa on January 31, 2020. Declaration of Ana L. Juarez ("Juarez Decl.") ¶ 4; Dkt. No. 1 (Petition) ¶¶ 15, 22. His visa allowed him to stay in the United States for six months. Juarez Decl. ¶ 4. Petitioner alleges that his visa was extended once by USCIS, but admits that his visitor status "expired in early July 2021." Dkt. No. 1 ¶¶ 24-25. He has remained in the United States in unlawful status since the expiration of his visa. Juarez Decl. ¶ 4.

According to Petitioner, in March 2025, Petitioner's U.S. citizen spouse filed a Form I-130, Petition for Alien Relative, on Petitioner's behalf. At the same time, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. Dkt. No. 1 ¶ 27. Petitioner alleges that his Form I-485 application to adjust status remains pending with USCIS. *Id.*

B. Petitioner's Arrest and Commencement of Removal Proceedings

On November 3, 2025, Petitioner was arrested and detained pursuant to an arrest warrant issued under 8 U.S.C. § 1226(a). Juarez Decl. ¶ 5; *see* Dkt. 1 ¶ 29. On its face, the arrest warrant indicates that the issuing Immigration Officer determined that there was probable cause to believe that Petitioner is removable from the United States, and commands DHS immigration officers "to arrest [Petitioner] and take [him] into custody for removal proceedings under the Immigration and Nationality Act." Juarez Decl. Ex. 1. According to the certificate of service, the warrant was served on Petitioner at 1:05 p.m., and he was taken into DHS custody. Juarez Decl. ¶ 5 & Ex. 1. The arresting officer explained to Petitioner that he was being detained to place him in removal proceedings. *Id.* ¶ 5.

An NTA was issued the same day, and Petitioner was put in removal proceedings. *Id.* ¶ 6 & Ex. 2. The NTA alleges that Petitioner has overstayed his visa and charged him as removable pursuant to 8 U.S.C. § 1227(a)(1)(B) on that basis. *Id.* The NTA ordered Petitioner to appear before an immigration judge on November 17, 2025, at 1:00 p.m. *Id.* Ex. 2 at 1. The Deportation Officer served the NTA on Petitioner in person on November 3, 2025, and provided oral notice of the time and place of his immigration court hearing. *Id.* ¶ 6 & Ex. 2 at 2. Petition signed a certificate of service on the second page of the NTA attesting to personal service. *Id.* The NTA was filed with the immigration court on November 3, 2025; the runner at the top of the NTA confirms that it was uploaded at 2:48 p.m. on November 3, 2025. *Id.* ¶ 6 & Ex. 2. The case was docketed with the Executive Office of Immigration Review ("EOIR") two days later, on November 5, 2025. *Id.* Ex. 4. EOIR's Automated Case Information database confirms that Petitioner has a hearing on the master calendar before immigration judge Jerome Rothschild, Jr., on November 17, 2025. *Id.*

On November 3, 2025, Petitioner was transferred from San Francisco to the California City Detention Facility in California City, California. He remains detained there under § 1226(a). *Id.* ¶ 5. His master calendar hearing will be held at immigration court in that facility. *Id.* Ex. 4 at 1.

A DHS Supervisory Detention and Deportation Officer conducted an initial custody determination on November 13, 2025, pursuant to 8 C.F.R. § 236.1(c)(8). Juarez Decl. ¶ 7 & Ex. 3. The officer determined that Petitioner would remain detained pending his removal proceedings. *Id.* The Notice of Custody Determination notified Petitioner that he could request a review of the custody determination by an immigration judge and gave him the opportunity to check a box to request a custody redetermination by an immigration judge. *Id.* Ex. 3. The contents of the notice were also read to Petitioner. Petitioner refused to sign the notice and did not check the box requesting a custody redetermination. *Id.* As of the date of this filing, Petition has not requested a bond hearing before an immigration judge. Juarez Decl. ¶ 9

C. Petitioner's Criminal History

Petitioner's criminal history since his arrival in the United States nearly six years ago reveals two criminal incidents. In May 2021, Petitioner was convicted of a DUI offense. He was sentenced to four days in jail and three years of probation. Juarez Decl. ¶ 10 & Ex. 5. Three years later, Petitioner was arrested in February 2024 for battery with serious bodily injury under California Penal Code § 242, a misdemeanor. The disposition of that arrest is unknown. *Id.*

D. Petitioner's Current Habeas Petition.

On November 3, 2025, Petitioner filed a petition for writ of habeas corpus and complaint under the Administrative Procedure Act ("APA").[1] Dkt. No. 1. The petition raises three claims: (1) an alleged violation of Petitioner's Fifth Amendment Due Process rights because he was "deprived of notice, a fair hearing, and an opportunity to challenge his detention before an impartial decision-maker," and was arrested at a scheduled USCIS appointment, Dkt. No. 1 ¶¶ 44, 45; (2) a claim that his detention is unlawful because Petitioner is in a "period of authorized stay" due to his adjustment of status application, *id.* ¶ 47; and (3) a claim that his detention violates the APA because "no NTA has been filed or served." *Id.* ¶ 57. He seeks immediate release from immigration detention, an order preventing his transfer outside this District, and an order enjoining further detention without "a lawful and individualized custody determination." *Id.* at 13.

Petitioner filed an emergency motion for a temporary restraining order on November 11, 2025. Dkt. No. 7. The motion asks the Court to enjoin Respondents "from denying his adjustment of status application, transferring him from his current place of detention, or removing him." Dkt. No. 7 at 3.

[1] While the pleading is styled as both a habeas petition and an APA complaint, it was filed as habeas petition, and Petitioner paid only the $5.00 habeas filing fee. *See* Dkt. No. 1.

III. LEGAL STANDARDS

A. Adjustment of Status Under 8 U.S.C. § 1255.

The Immigration and Nationality Act ("INA") established adjustment of status as a two-step process by which a noncitizen obtains lawful permanent resident status from within the United States, as opposed to obtaining such status through processing abroad at a United States consulate. *See* 8 U.S.C. § 1255. The first step requires the noncitizen to have an approved visa petition which, as relevant here, involves an immediate relative (the petitioner) filing a visa petition (Form I-130, Petition for Alien Relative) with USCIS on behalf of the noncitizen family member (the beneficiary) with USCIS so that the agency can investigate the facts of the case and, if those facts demonstrate eligibility, grant the petition. *See generally* 8 U.S.C. §§ 1154(a) (defining the visa petition process), 1154(b) (authorizing investigation and decision). The approval of the petition classifies the noncitizen relative—the "beneficiary"–– in one of the congressionally created immigrant relative categories under the INA. 8 U.S.C. §§ 1151(b), 1153(a), 1154(a)(1)(A)(i), (a)(1)(B)(i)(I); 8 C.F.R. § 204.1(a)(1). The approval of a visa petition does not entitle the beneficiary to adjustment to legal permanent resident status. *Agyeman v. I.N.S.*, 296 F.3d 871, 879 (9th Cir. 2002) (citation omitted). Rather, the agency still must decide to accord such status. 8 U.S.C. §§ 1255(a), (i).

The second step requires a noncitizen with an approved visa petition to apply for adjustment of status using USCIS's Form I-485, Application to Register Permanent Residence or Adjust Status. Significantly, Congress left decisions to grant permanent resident status to the Secretary's discretion, as delegated to USCIS, with the basic criteria for adjustment of status as set forth in 8 U.S.C. § 1255(a):

> The status of an alien who was inspected and admitted or paroled into the United States . . . may be adjusted by the Attorney General,[2] *in his discretion* and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if:

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[2] On March 1, 2003, many of the U.S. Department of Justice functions were transferred to the newly created U.S. Department of Homeland Security. *See* Homeland Security Act ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135 (Sept. 25, 2002). Under the HSA, any reference to the Attorney General concerning a function transferred to another agency is deemed to refer to the agency or official to which the function was transferred. HSA § 1517, 116 Stat. at 2311 (codified at 6 U.S.C. § 557). In this case, the authority to adjudicate applications for adjustment of status resides with the Secretary of Homeland Security and USCIS, a component of the U.S. Department of Homeland Security. *See* 6 U.S.C. §§ 271(b)(1), (4) & (5), 557.

> (1) the alien makes an application for such adjustment
>
> (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
>
> (3) an immigrant visa is immediately available to him at the time his application is filed.

8 U.S.C. § 1255(a) (emphasis added); *see also* 8 C.F.R. § 245.1(a). USCIS engages in a two-step process when evaluating an application for adjustment of status: first, the agency determines statutory eligibility for adjustment and second, the agency decides whether to grant that benefit as a matter of discretion. *See Patel v. Garland*, 596 U.S. 328, 348 (2022).

B. Immigration Detention Pending Removal Proceedings Under 8 U.S.C. § 1226(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 individuals who were previously lawfully present in the country but are now in removal proceedings (such as a nonimmigrant who overstayed his visa) is generally governed by 8 U.S.C. § 1226. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). The default rule, Section 1226(a), "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Id.* at 847 (quoting Section 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Every individual apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 138 S. Ct. at 847 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). "Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

C. Temporary Restraining Orders.

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Such an injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioners seek here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Ibid.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Ibid.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Courts have also denied TRO motions where the relief the plaintiffs seek is the same relief sought on the merits, because "[j]udgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Mendez v. ICE*, No. 23-cv-00829-TLT, 2023 WL 2604585, at *3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

IV. ARGUMENT

A. Petitioner Fails to Meet the High Bar For Mandatory Injunctive Relief Because He Cannot Succeed on The Merits of His Claim, and The Court Does Not Have Jurisdiction To Grant the Requested Relief.

Petitioner's motion for temporary restraining order makes two arguments: first, that the denial of his pending adjustment of status application would be "unjust"; and second that removal proceedings have not been lawfully commenced. Dkt. No. 7 at 8, 10. These arguments are incorrect both legally and factually, and even if true would not entitle Petitioner to the mandatory injunctive relief that he seeks in this habeas action.

1. Petitioner's Form I-485 Application Does Not Confer Lawful Status

Much of Petitioner's argument rests on an incorrect legal premise: that the filing of his Form I-485 Application somehow "suspended" his unlawful presence or insulated him from removal proceedings. Petitioner's argument is directly contrary to the law in the Ninth Circuit. In *Ayanian v. Garland*, 64 F.4th 1074 (9th Cir. 2023), the Ninth Circuit, citing the USCIS Policy Manual, reiterated that "[a] pending application for adjustment of status 'does not confer lawful immigration status on an applicant.'" *Ayanian*, 64 F.4th at 1082 (citing 7 USCIS-PM B.3(E)). Accordingly, an individual with a pending application "'may be subject to removal proceedings unless and until the . . . adjustment application . . . is approved." *Id.* The *Ayanian* Court cited an earlier Ninth Circuit decision, *United States v. Latu*, 479 F.3d 1153 (9th Cir. 2007), which similarly held that a "'pending I-485 application for adjustment of status d[oes] not affect . . . removability.'" *Ayanian*, 64 F.4th at 1082 (citing *Latu*, 479 F.3d at 1155).

In *Latu*, the Ninth Circuit held that the defendant in that case, who, like Petitioner here, entered the United States legally but overstayed his visa, married a U.S. citizen, and had a pending I-485 application for adjustment of status, was nevertheless "an alien 'illegally or unlawfully' in the United States. In so holding, the Ninth Circuit noted that older cases that suggested otherwise "relied on immigration statutes in effect at the time that precluded removability (known at the time as deportability) when specific applications were filed." *Latu*, 479 F.3d at 1158. This reasoning, the *Latu* Court found, would not extend "to aliens who, like Latu, are removable despite having filed an application for legalization of status." *Id.* Petitioner's immigration status is identical to the defendant in

Latu. The USCIS Policy Manual, together with *Latu* and *Ayanian*, make clear that Petitioner remains removeable despite his pending application. Like the defendant in *Latu*, Petitioner "points to no statute that renders his presence lawful because of his pending application for adjustment of status." *Latu*, 479 F.3d at 1158. While Petitioner cites 8 C.F.R. § 245.2(a)(1) for the proposition that "individuals with pending adjustment of status applications are considered to be in a period of authorized stay," Dkt. No. 1 ¶ 36, that provision merely speaks to USCIS's "jurisdiction to adjudicate an application for adjustment of status filed by any alien"; it contains no language even hinting at the "authorized status" proposition for which it is cited.

Nor do Petitioner's other citations support his argument. The out-of-circuit authorities on which Petitioner relies, Dkt. No. 7 at 9, are either no longer good law or fail to support the proposition for which they are cited, and they certainly cannot overcome the binding, contrary Ninth Circuit precedent as set forth in *Latu* and *Ayanian*. The Fifth Circuit has acknowledged that *United States v. Brissett*, 720 F. Supp. 90 (S.D. Tex. 1989), one of the cases cited by Petitioner, was explicitly abrogated by *United States v. Lucio,* 428 F.3d 519 (5th Cir.2005), which held that "a formerly illegal alien who applies for adjustment of status is not in lawful status merely because he is allowed to remain in the United States while his application is pending." *United States v. Elrawy*, 448 F.3d 309, 313–14 (5th Cir. 2006) ("because Elrawy acquired unlawful status on account of his overstay, his unlawful status did not change merely by his filing the application for adjustment of status"; "[t]he fact that his wife's I–130 petition in his favor was approved is also of no avail, because the approval of the petition is only one step in the application for adjustment of status). Far from "reaffirming" Petitioner's position, the Tenth Circuit in *United States v. Atandi,* 376 F.3d 1186 (10th Cir. 2004), took no position on "the effect of a filed amnesty application or I-485 application," 376 F.3d at 1192 n.12, and the Ninth Circuit in *Lanta* noted that the *Atandi* Court in fact "called into doubt" language that seemingly supported Petitioner's position. *See Latu*, 479 F.3d at 1157.[3]

[3] Neither *Yesil v. Reno*. 958 F. Supp. 828 (S.D.N.Y. 1997), nor *Larrea v. U.S. Attorney General,* 494 F. App'x 935, 939 (11th Cir. 2012), is persuasive authority. In *Yesil*, the alien was in lawful status when he applied for adjustment of status. Moreover, in reaching its decision that the applicant continued his "lawful unrelinquished domicile" in the United States after his application, the *Yesil* court relied on authorities, including *United States v. Brissett*, that have since been abrogated. *See Yesil*, 958 F. Supp. at 843. *Larrea* does not address the effect of a pending I-485 on the applicant's status.

Under binding Ninth Circuit law, Petitioner's pending I-485 application does not confer lawful status and does not protect him from removal proceedings. *Ayanian*, 64 F.4th at 1082; *Latu*, 479 F.3d at 1155; 7 USCIS-PM B.3(E). Petitioner's argument that his arrest and detention were unlawful because of his pending application, therefore, must be rejected.

2. Petitioner Was Lawfully Arrested And Detained Under 8 U.S.C. § 1226(a)

Because Petitioner initially entered this country lawfully (before overstaying his visa and falling into unlawful status), he is subject to the discretionary detention under 8 U.S.C. § 1226(a) while his removal proceedings are pending.[4] Petitioner was properly arrested pursuant to that provision, which provides that "[o]n a Warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)). Detention pursuant to § 1226(a) is part of this multi-layered civil detention structure created by Congress and sanctioned by the Supreme Court. 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.

Petitioner argues that his arrest was unlawful because no Notice to Appear was filed or served on Petitioner. Dkt. No. 7 at 10. This assertion is belied by the record. DHS issued a warrant for Petitioner's arrest on November 3, 2025, pursuant to 8 U.S.C. § 1226(a), after determining that there was probable cause to believe that Petitioner is removable from the United States. Juarez Decl. ¶ 5 & Ex. 1. The purpose of the arrest was to place Petitioner in removal proceedings; indeed the warrant specifically commands the immigration officer "to arrest [Petitioner] and take him into custody for

[4] By contrast, "applicants for admission"—including individuals who are present in the country without admission or parole—are subject to the mandatory detention provision of 8 U.S.C. § 1225(b). This provision does not apply to Petitioner due to his lawful admission under the B-2 visa.

removal proceedings under the Immigration and Nationality Act." *Id.*. Ex. 1. The same day, Petitioner charged with removability under 8 U.S.C. § 1227(a)(1)(B) as a nonimmigrant who was admitted but who remained in the United States for a time longer than permitted, and a Notice to Appear ("NTA") was issued to him. *Id.* ¶ 6 & Ex. 2. Petitioner was ordered to appear before an immigration judge on November 17, 2025, at 1:00 p.m. The NTA contained a certificate of service indicating that it was served in person on Petitioner on November 3, 2025, and it was signed by Petitioner himself, acknowledging personal service. *Id.* & Ex. 2 at 2. Petitioner's assertion that no NTA was issued or served, therefore, is directly contradicted by the record.

While Petitioner argues that DHS lacked authority to detain Petitioner until the NTA was filed with the immigration court, Dkt. No. 7 at 10, § 1226(a) requires only the issuance of a warrant, not the commencement of formal removal proceedings. The case cited by Petitioner—*Samayoa-Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009)—does not hold otherwise. *Samayoa-Martinez* addresses the notice required in connection with arrests of aliens without warrants under a different provision, 8 U.S.C. § 1357.3(c), and says nothing about the government's detention authority under § 1226(a). Petitioner's motion does not cite any case supporting the proposition that an alleged deficiency in the content or timing of an NTA is a basis for invalidating detention under § 1226(a) or granting release from § 1226(a) detention, much less through a habeas claim in District Court. *See Tatiana Zaiko v. James Janecka, et al.*, No. 25-cv-08646, 2025 WL 3049858, at *5 (C.D. Cal. Sept. 25, 2025) (preliminary injunction denied for lack of jurisdiction where petitioner was detained under § 1226(a) for three weeks before removal proceedings commenced). But in any event, the "upload" runner at the top of the NTA indicates that it was transmitted to and accepted by the immigration nearly simultaneously with the arrest. Juarez Decl. ¶ 6 & Ex. 2. Section 1226(a) permits detention during removal proceedings, and Petitioner was detained after DHS made the determination to commence removal proceedings. Petitioner was charged with removability before his arrest, and was issued an NTA the same day. The NTA was promptly filed with the immigration court, and removal proceedings are pending and well underway. *Id.* ¶ 6 & Ex. 4. Petitioner is scheduled for his first appearance in immigration court on November 17, 2025. *Id.* Petitioner cannot point to any procedural protections that he was denied or any statutory safeguards that were bypassed in connection with his arrest and detention under § 1226(a).

B. This Court Lacks Jurisdiction To Grant The Relief Requested By Petitioner.

1. The Court Lacks Jurisdiction To Review Or Enjoin The Denial Of Petitioner's Adjustment of Status Application.

Petitioner's TRO motion asks the Court to enjoin the denial of his I-485 adjustment-of status application. Dkt. No. 7 at 8. Notably, this relief is not sought in the habeas petition itself, but in any event, this Court categorically lacks jurisdiction to entertain such a request. While Petitioner asserts, without citing any authority, that "the denial of an adjustment of status application is subject to judicial review" under the APA, *id.*, in fact the opposite is true: any decision regarding adjustment of status under 8 U.S.C. §1255 is unreviewable under the jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(a)(2)(B)(i) and 1252(a)(2)(B)(ii). *See Patel v. Garland*, 596 U.S. 328, 338-39 (2022) (Section 1252(a)(2)(B)(i) prohibits "review of any judgment regarding the granting of relief under § 1255"); *Nakka v. U.S. Citizenship & Immigration Servs.*, 111 F.4th 995, 1015 (9th Cir. 2024).

Section 1252(a)(2)(B)(i) provides:

> Notwithstanding any other provision of law (statutory or nonstatutory), including 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review (i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title . . . .

8 U.S.C. § 1252(a)(2)(B)(i). Section 1252(a)(2)(B)(ii) provides:

> (ii) any other decision or action of the Attorney General or Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. § 1252(a)(2)(B)(ii).

As the Supreme Court held in *Patel*, the plain language of 8 U.S.C. § 1252(a)(2)(B)(i) strips courts of jurisdiction to review any decision that is governed by 8 U.S.C. § 1255, including USCIS's adjudication of Petitioner's Form I-485 application for adjustment of status. And controlling Ninth Circuit case law holds that the jurisdiction-stripping provision of 8 U.S.C. § 1252(a)(2)(B)(i) applies to any challenge to USCIS's denial of an adjustment application, even outside the context of removal proceedings. *See Nakka*, 111 F.4th at 1015 (holding that "[w]e ultimately agree with our sister circuits that § 1252(a)(2)(B)(i) strips district courts of jurisdiction to hear a plaintiff's APA claim when that claim challenges an agency's individualized denial of an application for adjustment of status"); *see also Kerur v. Mayorkas*, No. 23-cv-1305-VKD, 2024 WL 1024742, at *3 (N.D. Cal. Mar. 7, 2024) ("In view of the clear language of the statute, and the great weight of authority, the Court concludes that it lacks subject matter jurisdiction to review USCIS's denial of Mr. Kerur's application for adjustment of status."); *Ferreira v. Mayorkas*, 767 F. Supp. 3d 929, 937–38 (N.D. Cal. 2025).

Under the plain language of § 1252(a)(2)(B)(i), this Court lacks jurisdiction to consider Petitioner's request for preliminary injunctive relief, which would require the Court to evaluate Petitioner's claim that "denying [his] application would be unjust and arbitrary."

To the extent that Petitioner is asking the Court to interfere with the timing of USCIS's adjudication, by enjoining the agency from issuing a decision at this time, that claim is similarly barred; the discrete acts undertaken to render an adjustment decision and the timing of those acts are determined by the Attorney General in his discretion, and that discretionary action cannot be reviewed by federal courts. 8 U.S.C. §§ 1252(a)(2)(B)(ii), 1255. *Cheejati v. Blinken*, 106 F.4th 388, 394 (5th Cir. 2024); *see also Thigulla v. Jaddou*, 94 F.4th 770, 775 (8th Cir. 2024) (noting that USCIS's decision on whether to delay the adjudication of plaintiffs' adjustment applications constituted an "action" that is precluded from judicial review for purposes of § 1252(a)(2)(B)(ii)). Moreover, the Ninth Circuit reads the phrase "any other decision or action" in 8 U.S.C. § 1252(a)(2)(B)(ii) "expansively to cover all determinations made in support of a grant of discretionary relief under subsection (ii)." *Zia v. Garland*, 112 F.4th 1194, 1200 (9th Cir. 2024) (relying on *Patel v. Garland*, 596 U.S. 328 (2022)). Petitioner has identified no legal basis that would permit this Court to interfere with USCIS's "purely discretionary" adjudication of his adjustment-of-status application. *See Ayanian v. Garland*, 64 F.4th 1074, 1082–83 (9th Cir. 2023).[5]

[5] Additionally, the APA does not confer jurisdiction to review a pending adjustment of status application. *See* 5 U.S.C. § 704 (judicial review under the APA is available for a "final agency action for which there is no other adequate remedy in a court"). Nor can the Mandamus Act be used to compel or control an act which, by law, is discretionary. *See Nova Stylings Inc. v. Ladd*, 695 F.2d 1179, 1180 (9th Cir. 1983).

2. Petitioner Cannot Challenge the Government's Decision to Commence Removal Proceedings Against Him Or To Detain Him Through A Habeas Petition in District Court.

As discussed above, Petitioner was detained to put him in removal proceedings, and detention pending a removal decision is lawful under Section 1226(a). In arguing that his pending I-485 application insulates him from removal, Petitioner is challenging the decision to commence removal proceedings. This Court does not have jurisdiction to entertain this improper collateral attack on Petitioner's immigration court proceedings through the vehicle of a habeas petition. Congress has enacted numerous statutes intended to prevent this judicial interference. Chief among these provisions is 8 U.S.C. § 1252(g), which divests District Courts of jurisdiction to hear claims challenging one of "three discrete actions[:] . . . [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999) (emphasis in original); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g) precludes judicial review of execution of removal order). Thus, this Court lacks jurisdiction to hear Petitioner's claim that he is not subject to removal proceedings due to his alleged lawful status. *See Tatiana Zaiko v. James Janecka, et al.*, No. 25-cv-08646, 2025 WL 3049858, at *5 (C.D. Cal. Sept. 25, 2025). Any argument that his removal proceedings are improper must be directed to the immigration court and can be reviewed only through the petitioner-for-review process. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).

Similarly, to the extent Petitioner believes that the NTA was defective or untimely, or that the charge of removability is improper, he can raise these challenges in immigration court. *See Tatiana Zaiko*, 2025 WL 3049858, at *5. This Court does not have jurisdiction to review the decision to commence removal proceedings, the validity of the removal proceedings initiated pursuant to that NTA, or the decision to detain Petitioner pending those removal proceedings. *Tatiana Zaiko*, 2025 WL 3049858, at *5 (no habeas jurisdiction to review defective service and notice procedures or initiation of removal proceedings).

Additionally, Congress also took steps to prevent habeas jurisdiction from being misused to second-guess and collaterally attack immigration court orders. Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). 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. *Id.*; *see Lopez v. Barr*, No. 20-cv-1330, 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)). Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of removal proceedings. "Taken together, § 1252(a)(5) and § 1252(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) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)). Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). The petition-for-review process before the court of appeals ensures that non-citizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (noting that § 1252(b)(9) did not present jurisdictional bar where respondents were not asking for a review of order of removal, were not challenging decision to detain them in the first place or seek removal, and were not challenging process by which removability would be determined)."). Here, Petitioner appears to challenge the government's decision and action to detain him, claiming it was illegitimate, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Saadulloev v. Garland*, No. 23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold arrest and detention decision, which flows from the government's decision to "commence proceedings").

Accordingly, there no jurisdiction to contest the government's decision to initiate removal proceedings against Petitioner. To the extent Petitioner wishes to raise any claims in that regard, he must follow the claim channeling process that Congress established—going up to BIA and the Ninth Circuit—and not try to circumvent those adjudicative bodies by filing a habeas claim in District Court.

3. This Court Does Not Have Jurisdiction To Enjoin Petitioner's Removal Or Transfer.

Finally, Petitioner asks the Court to enjoin Respondents from "transferring and removing" him while these proceedings are pending. Section 1252(g) bars any cause of action arising from the "decision or action" to "execute removal orders." In enacting Section 1252(g), Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. *Id.* Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review of claims arising from a decision or action to "execute" a final order of removal. *See AADC*, 525 U.S. at 482; *see also Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order," even "indirectly," is "jurisdictionally barred").

Nor may the Court enjoin the transfer of Petitioner. Decisions regarding the place of confinement of aliens subject to removal orders or awaiting a decision on removal are committed to the discretion of the Secretary pursuant to 8 U.S.C. § 1231(g)(1). *Comm. of Cent .Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986) (recognizing the "Attorney General's broad discretion in exercising his authority to choose the place of detention for deportable aliens."). As such, the decision to transfer an alien from one detention center to another is not judicially reviewable. *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 691 (9th Cir. 2003); *Avilez v. Barr*, No. 19-cv-08296-CRB, 2020 WL 570987, at *2 (N.D. Cal. Feb. 5, 2020). "Congress vested [DHS] with authority to enforce the nation's immigration laws . . . ICE necessarily has the authority to determine the location of detention of an alien in deportation proceedings . . . and therefore, to transfer aliens from one detention center to another." *Calla-Collado v. Att'y Gen.*, 663 F.3d 680, 685 (3d Cir. 2011); *Gandarillas-Zambrana v. BIA*, 44 F.3d 1251, 1256 (4th Cir. 1995) (internal citations omitted).

C. Petitioner Has Not Identified Any Due Process Violation.

Petitioner claims that he has been deprived of "notice, a fair opportunity to contest the grounds for detention, and the ability to be heard before an impartial adjudicator." Dkt. No. 7 at 12. But he was provided notice, and he has failed to avail himself of the procedural protections provided under § 1226(a), which include an opportunity to contest the basis for detention before an immigration judge.

1. Section 1226(a) Provides Procedural Protections That Satisfy Due Process.

"Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions." *Rodriguez Diaz*, 53 F.4th at 1202. This statute provides "numerous levels of review, each offering [the detainee] the opportunity to be heard by a neutral decisionmaker," which ensure that "the risk of erroneous deprivation" is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1209-10. In *Rodriguez Diaz*, the Ninth Circuit concluded that these "procedures satisfy due process, both facially and as applied to Rodriguez Diaz." *Rodriguez Diaz*, 53 F.4th at 1213.

Every individual apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether the detainee has "demonstrate[d]" that "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the noncitizen may ask an IJ for a redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing held before an IJ for an individual detained under Section 1226(a) is also called a "redetermination hearing." At this hearing, the detainee bears the burden of establishing "that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). If the detainee meets his burden, the IJ will order release. *Rodriguez* Diaz, 53 F.4th at 1197. "The detainee may be represented by counsel and can submit evidence in support of his claims." *Id.* Bond hearings are separate and apart from, and form no part of, an individual's removal hearings. 8 C.F.R. § 1003.19(d).

The alien may appeal the IJ's custody redetermination to the BIA. 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Further, an alien who remains detained pursuant to Section 1226(a) after the initial bond hearing may request that the IJ conduct another custody redetermination whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). If dissatisfied with the outcome of any subsequent hearing, an alien may appeal that decision to the Board as well. *See Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

Here, ICE determined that Petitioner would remain in detention. Juarez Decl. ¶ 7 & Ex. 3; 8 C.F.R. § 236.1(c)(8). The next step is a custody redetermination before a neutral adjudication. 8 C.F.R. § 236.1(d)(1). That procedure remains available to him. Petitioner cannot be heard to assert a constitutional infirmity when the law already provides for the very mechanism that he asks the Court to require—"a lawful and individualized custody determination." Dkt. No. 1 at 13.

2. Petitioner has failed to exhaust his administrative remedies.

This Court should require Petitioner to avail himself of the substantial procedural protections of Section 1226(a) before seeking habeas relief in a federal district court. Petitioner has never requested a bond redetermination hearing from an IJ. 8 C.F.R. § 236.1(d)(1). And even if he were to disagree with an IJ's future bond decision, he would be able administratively appeal the decision to the BIA. Therefore, Petitioner has several layers of process available to him prior to seeking this Court's intervention.

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.*

Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

The Court should not allow Petitioner to move forward with this litigation without first exhausting his administrative remedies. *See Coke v. Scott*, No. 25-cv-00694, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), R & R adopted, 2025 WL 2107736 (W.D. Wash. July 28, 2025). As in *Coke*, all of the elements that favor the exhaustion requirement are present here. First, Petitioner seeks release from detention, which "requires consideration of numerous facts which should be developed for presentation and then weighed by an IJ in the first instance." *Coke*, 2025 WL 2108711, at *5. The BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Francisco Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Second, "a waiver of prudential exhaustion would tend to encourage detainees to deliberately bypass the administrative scheme which contemplates a bond determination made by an IJ rather than the Court." *Coke*, 2025 WL 2108711, at *5. And third, exhaustion would not be futile because "an IJ has not yet been given a chance to address whether Petitioner should be released pending a final determination of removal. The agency should thus be afforded the opportunity to address bail in the first instance." *Id.*

Accordingly, the Petition should be dismissed to the extent Petitioner seeks a bond hearing before a neutral adjudicator because Petitioner has failed to exhaust his administrative remedies.

D. The Remaining *Winter* Factors Do Not Favor Petitioner.

Because Petitioner cannot show a likelihood of success on the merits, he is not entitled to a TRO. But in addition to his failure to show a likelihood of success on the merits, Petitioner cannot meet his burden of showing that the other factors favor him. First, he has not demonstrated that he will be irreparably harmed in the absence of emergency relief. Petitioner primarily claims two categories of injury: (1) harm based on detention; and (2) harm from the "imminent risk of transfer." Dkt. No. 7 at 12. Any alleged harm from the fact of detention alone is insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). And as noted by the Ninth Circuit in *Rodriguez Diaz*, the risk of erroneous deprivation and value of additional process is small due to the procedural safeguards that Section 1226(a) provides. Petitioner is entitled to request a bond hearing before an immigration judge, and if he can show that he would not pose a flight risk or danger, he may be released. Accordingly, Petitioners cannot establish that his lawfully authorized detention would cause irreparable harm. Petitioner's speculative claimed injuries from a hypothetical transfer, which he has not established is likely or imminent, 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). Finally, the alleged infringement of Petitioner's 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)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm").

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)). 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 claimed 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). 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. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in upholding the existing regulatory scheme, ensuring that the roles of the immigration courts and USCIS are not usurped or improperly collaterally attacked through habeas proceedings, and requiring Petitioner to avail himself of the procedure protections already afforded by the § 1226(a) framework rather than creating additional, burdensome processes, is significant.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for temporary restraining order, deny the habeas petition, and enter judgment in favor of Respondents.

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Respectfully submitted,

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