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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FULVIO CASTILLO GOMEZ,
Petitioner,
v.
SERGIO ALBARRAN, et al.,
Respondents.

CASE NO. 5:26-cv-01790-NW

RESPONDENTS' MOTION TO DISSOLVE THE
TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF
RESPONDENTS' MOTION TO DISSOLVE THE
TEMPORARY RESTRAINING ORDER

Hon. Noel Wise

NOTICE OF MOTION

Pursuant to Federal Rule of Civil Procedure 65(b)(4), Respondents Sergio Albarran, Todd Lyons, Kristi Noem, and Pam Bondi (“Respondents”) move to dissolve the temporary restraining order (“TRO”) that was granted ex parte. *See* Dkt. No. 6. Under the same rule, Respondents request that a hearing be held within two days on this Motion to Dissolve.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is supported by the concurrently-filed Declaration of Deportation Officer Maika Rentería with accompanying Exhibits. As set forth in the Points and Authorities in support of this Motion, Petitioner is not likely to succeed on the merits because he is subject to a final order of removal and is thus subject to detention under 8 U.S.C. § 1231(a)(6). Petitioner is also not entitled to a pre-deprivation hearing because he lacks a constitutionally protected liberty interest.

WHEREFORE, Respondents pray that this Court grant their request to dissolve the temporary restraining order.

Dated: March 4, 2026

Respectfully submitted,

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TABLE OF CONTENTS

NOTICE OF MOTION.....	ii
I. INTRODUCTION.....	1
II. FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. Factual Background	2
B. Procedural Background.....	3
III. LEGAL STANDARD.....	3
A. Federal Rule of Civil Procedure Rule 65(b)(4).....	3
B. The Temporary Restraining Order Standard.....	3
IV. ARGUMENT.....	4
A. Respondents’ Motion to Dissolve the Temporary Restraining Order Meets the Requirements of Federal Rule of Civil Procedure 65(b)(4).....	4
B. Petitioner Is Unlikely To Succeed On The Merits Of His Claim	5
1. Petitioner Is Not Likely To Succeed On His Claim That ICE Lacks Statutory Authority To Detain Petitioner.....	5
2. Petitioner Is Not Likely To Succeed On His Due Process Claim.....	5
3. Even Under the <i>Mathews v. Eldridge</i> Test, Petitioner Is Unlikely To Succeed	7
C. Petitioner Has Not Met His Burden to Show Likely Irreparable Harm Without Immediate Injunctive Relief	9
D. The Balance of Equities and Public Interest Favor Respondents	9
E. All Named Respondents Besides the Immediate Custodian Must Be Stricken.....	10
F. Any Relief Besides Release from Custody Is Inappropriate in Habeas.....	11
G. Petitioner’s Immediate Custodian Can Only Provide Release from Custody	11
H. The Issue of Ultimate Relief Must Not Be Decided in A TRO	11
I. This Court Cannot Enjoin Petitioner’s Removal from The United States.....	12
J. The Court Cannot Prohibit Respondents from Transferring Petitioner Between Detention Facilities	13
K. Respondents Should be Granted a Reasonable Amount of Time to Prepare their Return to the Habeas Petition	14

1	L.	Petitioner’s Detention Does Not Violate the Orders in <i>Garro Pinchi v. Noem</i>	14
2	M.	Petitioner’s Detention Does Not Violate the Orders in <i>Pablo Sequen v.</i>	
3		<i>Albarran</i>	15
4	V.	CONCLUSION.....	15

TABLE OF AUTHORITIES**Cases**

<i>Aslan v. Wamsley</i> , No. 2:25-cv-2698, 2026 WL 84000 (W.D. Wash. Jan. 12, 2026).....	12, 14
<i>Avilez v. Barr</i> , No. 19-cv-8296, 2020 WL 570987 (N.D. Cal. Feb. 5, 2020).....	13
<i>California v. Texas</i> , 593 U.S. 659 (2021).....	11
<i>Calla-Collado v. Att’y Gen.</i> , 663 F.3d 680 (3d Cir. 2011).....	14
<i>Carlson v. Landon</i> , 342 U.S. 524 (1952).....	9
<i>Chavez v. Murray</i> , No. 1:25-cv-198, 2025 WL 1017678 (E.D. Cal. Apr. 4, 2025).....	12
<i>Comm. of Cent .Am. Refugees v. INS</i> , 795 F.2d 1434 (9th Cir. 1986).....	13
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	7, 9
<i>Dep’t of Homeland Sec. v. Thuraissigiam</i> , 591 U.S. 103 (2020).....	6, 11
<i>Doe v. Garland</i> , 109 F.4th 1188 (9th Cir. 2024).	10
<i>Drakes Bay Oyster Co. v. Jewell</i> , 747 F.3d 1073 (9th Cir. 2014).....	9
<i>Dzhanpolatov v. USCIS</i> , No. 25-cv-3314, 2025 WL 1652427 (N.D. Cal. May 26, 2025).....	12
<i>Ex Parte Endo</i> , 323 U.S. 283 (1944).....	14
<i>Gandarillas-Zambrana v. BIA</i> , 44 F.3d 1251 (4th Cir. 1995).....	14
<i>Garcia v. Google, Inc.</i> , 786 F.3d 733 (9th Cir. 2015).....	4
<i>Garro Pinchi v. Noem</i> , No. 25-cv-5632, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).....	14, 15
<i>Guillermo M.R. v. Kaiser</i> , 3:25-cv-5436 (N.D. Cal. Jun. 29, 2025).....	10
<i>J.E.F.M. v. Lynch</i> , 837 F.3d 1026 (9th Cir. 2016).....	13
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018).....	13
<i>Johnson v. Arteaga-Martinez</i> , 596 U.S. 573 (2022).....	7
<i>Keo v. Warden of Mesa Verde ICE Processing Ctr.</i> , No. 1:24-cv-919, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024).....	12
<i>Landon v. Plasencia</i> , 459 U.S. 21 (1982).....	9
<i>Lopez v. Brewer</i> , 680 F.3d 1068 (9th Cir. 2012).....	4
<i>Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.</i> , 571 F.3d 873 (9th Cir. 2009).....	4
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	8

1	<i>Mendez v. ICE</i> , No. 23-cv-829, 2023, WL 2604585 (N.D. Cal. Mar. 15, 2023).....	4, 12
2	<i>Munaf v. Geren</i> , 553 U.S. 674 (2008).....	11
3	<i>Nadarajah v. Gonzales</i> , 443 F.3d 1069 (9th Cir. 2006)	13
4	<i>Pablo Sequen v. Albarran</i> , No. 25-cv-6487, 2025 WL 3283283 (N.D. Cal. Nov. 25, 2025).....	15
5	<i>Preiser v. Rodriguez</i> , 411 U.S. 475 (1973).....	11
6	<i>Rauda v. Jennings</i> , 55 F.4th 773 (9th Cir. 2022).....	9, 12
7	<i>Reno v. American-Arab Anti-Discrimination Comm.</i> , 525 U.S. 471 (1999)	13
8	<i>Reno v. Flores</i> , 507 U.S. 292 (1993)	9
9	<i>Reyes-Aguilar v. United States Dep’t of Homeland Security</i> , 2012 WL 12849082 (C.D. Cal. Oct. 10, 2012)	9
10	<i>Rodas v. Samiea</i> , No. 5:26-cv-65, 2026 WL 184226 (C.D. Cal. Jan. 19, 2026)	12
11	<i>Rodriguez Diaz v. Garland</i> , 53 F.4th 1189 (9th Cir. 2022).....	5, 7, 8, 9
12	<i>Rumsfeld v. Padilla</i> , 542 U.S. 426 (2004)	14
13	<i>Senate of Cal. v. Mosbacher</i> , 968 F.2d 974 (9th Cir. 1992)	11
14	<i>Sierra On-Line, Inc. v. Phoenix Software, Inc.</i> , 739 F.2d 1415 (9th Cir. 1984).....	4
15	<i>Spencer Enters., Inc. v. United States</i> , 345 F.3d 683 (9th Cir. 2003).....	13
16	<i>Stanley v. Univ. of S. Cal.</i> , 13 F.3d 1313 (9th Cir. 1994)	4
17	<i>Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.</i> , 240 F.3d 832 (9th Cir. 2001).....	3
18	<i>Univ. of Tex. v. Camenisch</i> , 451 U.S. 390 (1981).....	11
19	<i>Viloria v. Lynch</i> , 808 F.3d 764 (9th Cir. 2015).....	13
20	<i>Winter v. NRDC</i> , 555 U.S. 7 (2008)	4
21	<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001)	6, 8

Statutes

23	8 U.S.C. § 1225.....	1
24	8 U.S.C. § 1231.....	<i>passim</i>
25	8 U.S.C. § 1252.....	12, 13

Other Authorities

27	Fed. R. Civ. P. 65(b)(4).....	1, 3, 4
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1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 65(b)(4), Respondents move to dissolve the
3 temporary restraining order (“TRO”) that was granted ex parte. *See* Dkt. No. 6. Under the same rule,
4 Respondents request that a hearing be held within two days on this Motion to Dissolve.

5 Respondents have serious concerns regarding the posture of this case. To obtain immediate
6 release from Immigration and Customs Enforcement (“ICE”) custody without hearing from the
7 government, does a habeas petitioner need only to allege a prior release pending removal proceedings
8 and disagreement with detention under 8 U.S.C. § 1225(b)(2)(A) – *regardless of the actual facts of the*
9 *case?*

10 Petitioner omitted from his filings the essential fact that he is subject to an order of removal.¹
11 Instead, he represented to this Court that he has accrued a liberty interest based on a prior release and
12 that he is not subject to detention under 8 U.S.C. § 1225(b)(2)(A). However, Petitioner has *not* been
13 detained or released since he was ordered removed. And Respondents have not asserted, nor would they
14 assert, that an alien with a final order of removal is subject to detention under § 1225(b)(2)(A). The
15 applicable detention authority for an alien with a final order of removal is, without question, 8 U.S.C.
16 § 1231.

17 Petitioner moved for an ex parte TRO based on these inaccurate facts and inapposite legal
18 argument. Then, the Court granted the TRO without giving Respondents the opportunity to correct the
19 record. As a result, the legal basis for the Court’s TRO is, at best, unclear.

20 Petitioner has not met his burden to obtain relief through a TRO. Petitioner is not likely to
21 succeed on the merits of his claim because his detention complied with the relevant statutes, regulations,
22 and the Constitution. Statutorily, Petitioner is subject to detention under 8 U.S.C. § 1231(a)(6) because
23 an Immigration Judge has found him inadmissible and ordered him removed. Constitutionally, Petitioner
24 is not entitled to a pre-deprivation hearing because, as an alien not previously admitted, he is entitled
25 only to the process due to him under the statutes, and the relevant statutes and regulations do not
26

27 ¹ At 10:12a.m. on March 3, 2026, counsel for Respondents informed counsel for Petitioner of the
28 removal order against Petitioner. As of the filing of this motion, Petitioner still has not corrected the
record with this Court.

1 contemplate a pre-deprivation hearing. Moreover, Petitioner's case is not like other cases in this District
2 where the Court has found that aliens released on an order of supervision have accrued a liberty interest
3 that entitles them to a pre-deprivation hearing. Since he was ordered removed, Respondents have not
4 detained and released Petitioner. Petitioner does not allege in any of his filings how his procedural
5 posture entitles him to a liberty interest. The Court's order granting the TRO also does not identify how
6 the supposed constitutionally protected liberty interest arose.

7 Petitioner's detention is not "inexplicable." Dkt. No. 6 at 2. ICE detained Petitioner to execute
8 the outstanding order of removal against him. ICE has the legal authority under the Immigration and
9 Nationality Act ("INA") to execute orders of removal. And the Ninth Circuit has found that courts are
10 statutorily prohibited in habeas from enjoining the execution of removal orders.

11 Accordingly, Respondents request that the Court dissolve the TRO and dismiss Petitioner's
12 habeas petition.

13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

14 **A. Factual Background**

15 Petitioner is a native and citizen of El Salvador who entered the United States without inspection
16 at or near Pharr, TX on March 3, 2006. Decl. of Maika Rentería ("Rentería Decl.") ¶ 5, Ex. 1. On the
17 same day, U.S. Customs and Border Protection ("CBP") officers apprehended Petitioner and released
18 due to detention capacity issues. *Id.* On March 4, 2006, CBP placed Petitioner into removal proceedings
19 as an alien present without admission or parole, and charged him with removability under section 8
20 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 6, Exs. 1, 2. CBP advised Petitioner that his first scheduled immigration
21 court hearing would occur on May 2, 2006, at 9:00a.m. in Harlingen, TX. *Id.* ¶ 6, Ex. 1. On the same
22 date, Petitioner was personally served with a Notice to Appear ("NTA") that contained the date, time,
23 and location of his first scheduled immigration court hearing. *Id.* ¶ 6, Ex. 2.

24 On May 2, 2006, Petitioner failed to appear at his scheduled hearing before an Immigration
25 Judge and was ordered removed *in absentia* pursuant to 8 U.S.C. § 1229a(b)(5)(A). Rentería Decl. ¶ 7,
26 Ex. 3. The Immigration Judge also found that Petitioner had abandoned any pending applications for
27 relief or protection from removal. *Id.* On or about October 5, 2025, Petitioner was arrested for driving
28

1 under the influence, in violation of Cal. Veh. Code. §§ 23152(a), (b). *Id.* ¶ 8, Ex. 4. Disposition of this
2 arrest is unknown. *Id.* ¶ 8.

3 On March 2, 2026, at approximately 12:49p.m., ICE arrested Petitioner and detained him
4 pursuant to 8 U.S.C. § 1231(a)(6). Rentería Decl. ¶ 9. At approximately 3:00p.m., Petitioner was booked
5 into the San Francisco ERO Holding Facility for processing. *Id.* Petitioner received a medical screening
6 conducted by a medical professional during intake at the facility. *Id.* On the same day, ICE transported
7 Petitioner from the San Francisco ERO Holding Facility to the Mesa Verde ICE Processing Facility in
8 Bakersfield, CA. *Id.* ¶ 10. Petitioner left the San Francisco ERO Holding Facility at approximately
9 5:24p.m. *Id.* The transport arrived at the Mesa Verde ICE Processing Facility at approximately 8:00p.m.
10 *Id.* On March 3, 2026, at approximately 12:00p.m., ICE released Petitioner from the Mesa Verde ICE
11 Processing Facility after they received the Order Granting Motion for Temporary Restraining Order. *Id.*
12 ¶ 11. He was transported to the Bakersfield ERO Sub-Office to process his release, and was released on
13 an Order of Recognizance at approximately 12:55p.m. *Id.*

14 **B. Procedural Background**

15 On March 2, 2026, Petitioner filed the Habeas Petition and Motion For Temporary Restraining
16 Order. *See* Dkt. No. 1, 2-1. That same day, the Court ordered Respondents to file a response by 12p.m.
17 on Tuesday, March 3, 2026. Dkt. No. 3. On March 3, 2026, at 10:15a.m., the Court issued an Order
18 Granting Temporary Restraining Order and ordered Petitioner's immediate release. Dkt. No. 6.

19 **III. LEGAL STANDARD**

20 **A. Federal Rule of Civil Procedure Rule 65(b)(4)**

21 Federal Rule of Civil Procedure 65(b)(4) states: “*Motion to Dissolve*. On 2 days’ notice to the
22 party who obtained the order without notice—or on shorter notice set by the court—the adverse party
23 may appear and move to dissolve or modify the order. The court must then hear and decide the motion
24 as promptly as justice requires.” Fed. R. Civ. P. 65(b)(4).

25 **B. The Temporary Restraining Order Standard**

26 The standard for issuing a temporary restraining order is “substantially identical” to the standard
27 for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839
28

1 n.7 (9th Cir. 2001). A preliminary injunction is “an extraordinary and drastic remedy, one that should not
 2 be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680
 3 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that “he is likely to succeed
 4 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
 5 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC*, 555
 6 U.S. 7, 20 (2008).

7 The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather
 8 than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,
 9 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take two forms.” *Marlyn*
 10 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). “A prohibitory
 11 injunction prohibits a party from taking action and ‘preserves the status quo pending a determination of
 12 the action on the merits.’” *Id.* (internal quotation omitted). “A mandatory injunction orders a responsible
 13 party to take action.” *Id.* at 879 (internal quotation omitted). “A mandatory injunction goes well beyond
 14 simply maintaining the status quo pendente lite and is particularly disfavored.” *Id.* “In general, mandatory
 15 injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful
 16 cases.” *Id.* Where plaintiffs seek a mandatory injunction, “courts should be extremely cautious.” *Stanley*
 17 *v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party
 18 “must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to
 19 succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Courts have also
 20 denied preliminary relief where the relief the plaintiff seeks is the same relief sought on the merits, because
 21 “[j]udgment on the merits in the guise of preliminary relief is a highly inappropriate result.” *Mendez v.*
 22 *ICE*, No. 23-cv-829, 2023 WL 2604585 at *3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of Cal. v.*
 23 *Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

24 IV. ARGUMENT

25 A. Respondents’ Motion to Dissolve the Temporary Restraining Order Meets the 26 Requirements of Federal Rule of Civil Procedure 65(b)(4)

27 Federal Rule of Civil Procedure 65(b)(4) permits Respondents to move to dissolve the temporary
 28 restraining order issued by the Court ex parte before Respondents had an opportunity to be heard. *See*

1 Dkt. No. 6; Fed. R. Civ. P. 65(b)(4). Petitioner's habeas petition and motion for TRO omitted dispositive
 2 facts. There is thus no legal basis for the Court's TRO.

3 This Court gave Respondents until 12p.m. on March 3, 2026, to respond to Petitioner's TRO.
 4 Dkt. No. 3. Respondents worked diligently to respond by the deadline. However, at 10:15a.m. on March
 5 3, 2026, the Court nevertheless granted Petitioner's TRO before Respondents could submit their
 6 response. Dkt. No. 6. Given the updated factual and legal background provided by this motion, the Court
 7 should dissolve the TRO.

8 **B. Petitioner Is Unlikely To Succeed On The Merits Of His Claim**

9 **1. Petitioner Is Not Likely To Succeed On His Claim That ICE Lacks Statutory
 10 Authority To Detain Petitioner**

11 Petitioner's TRO only addresses ICE's statutory detention authority under § 1225(b)(2)(A). Dkt.
 12 No. 2-1 at 13-14. However, this statutory detention authority is entirely inapposite. On May 2, 2006, an
 13 Immigration Judge found Petitioner inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) and ordered Petitioner
 14 removed. Rentería Decl. ¶ 6-7. Thus, Petitioner is subject to detention under 8 U.S.C. § 1231(a)(6).

15 Troublingly, Petitioner's habeas petition, motion for TRO, and two attorney declarations omit
 16 this key fact. Instead, Petitioner's motion for TRO argues that Petitioner is subject to detention under 8
 17 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2)(A). Dkt. No. 2-1 at 13-14. However, neither of these
 18 detention authorities apply to aliens with final removal orders. *None* of Petitioner's filings allege that
 19 Petitioner's detention violated § 1231 nor does Petitioner even acknowledge that he is subject to the
 20 provisions of § 1231. Because Petitioner does not even address § 1231, he cannot viably claim that he
 21 has succeeded on a claim that ICE lacks statutory authority to detain him.

22 **2. Petitioner Is Not Likely To Succeed On His Due Process Claim**

23 Petitioner's detention did not violate the Due Process Clause of the Fifth Amendment to the
 24 United States Constitution. *See* Dkt. No. 6 at 3. Respondents do not dispute that Petitioner has a right to
 25 due process of law. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022) ("The Fifth
 26 Amendment entitles aliens to due process of law in deportation proceedings.") (quoting *Hussain v.*
 27 *Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). However, Respondents dispute the extent of Petitioner's due
 28 process rights regarding his immigration detention. Petitioner is not owed immediate release or a pre-

1 deprivation hearing before a neutral decisionmaker prior to any detention. Dkt. No. 6 at 4.

2 The Supreme Court has been clear that aliens similarly situated to Petitioner do not have a
3 constitutional right to procedures beyond those afforded to them by statute. In *Dep't of Homeland Sec. v.*
4 *Thuraissigiam*, the Supreme Court addressed the procedural due process rights of aliens like Petitioner,
5 i.e. those detained shortly after entering the United States without admission. 591 U.S. 103, 138-40
6 (2020). The Supreme Court stated that these aliens have “no entitlement to procedural rights other than
7 those afforded by statute.” *Id.* at 107. The Supreme Court noted that this principle was not unique to its
8 decision in *Thuraissigiam* but instead was supported by “more than a century of precedent.” *Id.* at 138
9 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*,
10 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953);
11 *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

12 Petitioner’s reliance on *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), for a claimed due process
13 right to a pre-detention hearing on flight risk or danger to the community is mistaken. *See* Dkt. No. 2-1
14 at 13-14. Petitioner’s brief detention does not come close to raising the same concerns of prolonged
15 detention that motivated the Court’s decision in *Zadvydas*. Petitioner filed his habeas petition the same
16 day he was detained. The Court in *Zadvydas*, however, held that *six months of detention* for aliens
17 ordered removed is presumptively constitutional. In other words, the due process protections regarding
18 post-removal detention do not kick in until detention reaches the six-month mark.

19 Absent an identified event giving rise to a constitutionally protected liberty interest, Petitioner’s
20 claim can only proceed as a facial challenge to the constitutionality of detention under 8 U.S.C. § 1231.
21 Ordering immediate release on due process grounds requires the Court to make the extraordinary finding
22 that *all aliens subject to detention under 8 U.S.C. § 1231 are entitled to a pre-deprivation hearing prior*
23 *to their detention*. However, there is no precedent for this claim. Thus, it is surely *unlikely* that Petitioner
24 will prevail on this due process claim – especially because Petitioner’s filings do not even make this
25 claim under § 1231. How can Petitioner’s motion for TRO meet his burden of demonstrating a
26 likelihood of success on a claim that he has not even raised?

27 Petitioner’s demand that the Court enjoin Respondents from re-detaining him unless they

1 demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence, that Petitioner is a
 2 flight risk or danger to the community is without basis in law Dkt. No. 2-1 at 16. The Supreme Court has
 3 made clear that “there is no plausible construction of the text of § 1231(a)(6) that requires the
 4 Government to provide bond hearings before immigration judges after six months of detention, with the
 5 Government bearing the burden of providing by clear and convincing evidence” that a detained alien
 6 poses a flight risk and a danger to the community. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581
 7 (2022). Just as § 1231(a)(6) “does not address or even hint at the requirements,” for a bond hearing
 8 following the six-month mark of immigration detention, *id.* at 580–81 (quotation omitted), it similarly
 9 does not require a hearing before immigration authorities can detain an alien subject to a removal order.
 10 See 8 U.S.C. § 1231(a)(6). The INA grants immigration authorities the operational discretion and legal
 11 authority to take the actions necessary to effectuate the deportation of aliens illegally in the United
 12 States and ordered removed.

13 The Due Process Clause does not prohibit Petitioner’s re-detention.² Although the Fifth
 14 Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause
 15 “consistent with longstanding precedent recognizing that the process due aliens must account for the
 16 government’s countervailing interests in immigration enforcement – considerations that do not apply to
 17 U.S. citizens.” *Rodriguez Diaz v. Garland*, 53 F.4th at 1205-06. It is well-established that “Congress
 18 may make rules as to aliens that would be unacceptable if applied to citizens.” *Demore v. Kim*, 538 U.S.
 19 510, 522 (2003). This is true because “any policy toward aliens is vitally and intricately interwoven with
 20 contemporaneous policies in regard to the conduct of foreign relations, the war power, and the
 21 maintenance of a republican form of government, which are core sovereign powers.” *Id.*

22 3. Even Under the *Mathews v. Eldridge* Test, Petitioner Is Unlikely To Succeed

23 Even if Petitioner does have a liberty interest, he is unlikely to prevail on his claim. Assuming
 24 the factors set forth in *Mathews v. Eldridge* apply in this context to determine whether procedural
 25

26
 27 ² In *Arteaga-Martinez*, the Supreme Court declined to decide whether a bond hearing is
 28 constitutionally required if detention is prolonged under § 1231(a)(6). *Arteaga-Martinez*, 596 U.S. at
 583.

protections satisfy the Due Process Clause,³ the Court considers the following the three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *Mathews* is not a bright-line test, but a flexible standard that must account for the heightened governmental interest in the immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022) (citing cases).

The first factor favors Respondents because Petitioner's liberty interest is low. Petitioner entered this country illegally and was ordered removed *twenty years ago*. He has no prior release from immigration detention since being ordered removed.

The second *Mathews* factor also favors Respondents. In the context of an alien with a final order of removal, the risk of erroneous deprivation is relatively low. Here, Petitioner is subject to a final order of removal, Petitioner has no avenue of relief that would prevent his removal, § 1231(a)(6) explicitly authorizes Petitioner's detention in order to effectuate his removal order, and *Zadvydas* permits his detention for up to six months to effectuate his removal. Due Process does not mandate procedures that reduce the risk of erroneous deprivation to zero, a result that is beyond grasp. *Rodriguez Diaz*, 53 F.4th at 1213.

The final factor weighs decisively in Respondents' favor. The government has a strong interest in preventing aliens from remaining in the United States in violation of our law and, to this end, in executing a final order of removal. *See Roderiguez Diaz*, 53 F.4th at 1208. Once the government moves to execute a final order of removal, there should not be any additional hurdles, such as a pre-detention hearing, to effectuate what is already a final order. The pre-detention hearing that Petitioner requests is essentially a judicially created stay of a final order of removal. District courts cannot provide injunctive relief to enjoin or forestall the execution of removal orders via habeas cases and the courts should not be

³ The Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*. *See Rodriguez Diaz*, 53 F.4th at 1206 (9th Cir. 2022) (citing Supreme Court cases).

1 permitted to do indirectly that what they are prohibited from doing directly. *See Rauda v. Jennings*, 55
 2 F.4th 773, 777–78 (9th Cir. 2022) (finding the district court cannot enjoin removal via a habeas
 3 petition).; *see also Reyes-Aguilar v. United States Dep’t of Homeland Security*, No. 2012 WL 12849082
 4 (C.D. Cal. Oct. 10, 2012) (citing cases that find a district court cannot halt the execution of an order of
 5 removal).

6 On balance, if applied, the *Mathews* factors weigh decisively in Respondents’ favor.

7 **C. Petitioner Has Not Met His Burden to Show Likely Irreparable Harm Without**
 8 **Immediate Injunctive Relief**

9 Petitioner has not articulated an irreparable harm that can only be remedied with immediate
 10 injunctive relief. Because Petitioner’s detention complied with the statutes, regulations, and the
 11 Constitution, there is no unlawful deprivation of physical liberty nor a deprivation of constitutional
 12 rights. *See* Dkt. No. 2-1 at 14-15. Immigration laws have long authorized immigration officials to charge
 13 aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens pending
 14 removal. *Demore*, 538 U.S. at 523–26. “Detention is necessarily a part of [the] deportation procedure.”
 15 *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress
 16 eliminated any presumption of release pending deportation, committing that determination to the
 17 discretion of the Attorney General.”).

18 **D. The Balance of Equities and Public Interest Favor Respondents**

19 When the government is a party, the third and fourth preliminary injunction factors merge.
 20 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). “The government’s interest in
 21 efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in the balance
 22 that control over matters of immigration is a sovereign prerogative, largely within the control of the
 23 executive and the legislature.” *Landon v. Plasencia*, 459 U.S. at 34. Further, the government’s interest in
 24 protecting the public and preventing deportable aliens from fleeing is strong and compelling. *See, e.g.,*
 25 *Rodriguez Diaz*, 53 F.4th at 1208 (The government’s interests in the prompt execution of removal orders
 26 are “interests of the highest order that only increase with the passage of time” and the “risk of a detainee
 27 absconding also inevitably escalates as the time for removal becomes more imminent.”). These interests
 28 outweigh any interest Petitioner may have in being released for whatever limited time he has left before

1 being removed from the United States.

2 Moreover, there are months-long court delays in scheduling pre-deprivation hearings. *See*
 3 *Guillermo M.R. v. Kaiser*, 3:25-cv-5436-RFL, Dkt. No. 39 (N.D. Cal. Jun. 29, 2025) (“[O]n August 12,
 4 2025, the Immigration Court granted the motion of Respondent Department of Homeland...to schedule
 5 a pre-deprivation bond hearing for Petitioner. The hearing was scheduled for January 20, 2026.”). An
 6 order requiring a pre-deprivation hearing prior to Petitioner’s detention will lead to the prolonged
 7 frustration of the government’s lawful right to detain Petitioner to execute the removal order and would
 8 serve as an otherwise prohibited District Court issued stay of removal.

9 **E. All Named Respondents Besides the Immediate Custodian Must Be Stricken**

10 Respondents move for all Respondents other than Petitioner’s immediate custodian to be
 11 dismissed from this case. The United States Court of Appeals for the Ninth Circuit squarely addressed
 12 this issue in *Doe v. Garland*, where it explained:

13 Section 2242 states that habeas petitions “shall allege the facts concerning
 14 the applicant’s commitment or detention, the name of *the* person who has
 15 custody over him and by virtue of what claim or authority, if known.” 28
 16 U.S.C. § 2242 (emphasis added). The plain text of the federal habeas
 17 implementation provision delineates that petitions must include the name of
 18 “the” person maintaining custody over the petitioner, *id.*, implying that
 19 there is typically only one proper respondent to a habeas petition. *See*
 20 [*Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004)] (stating that “[t]he
 21 consistent use of the definite article in reference to the custodian indicates
 22 that there is generally only one proper respondent to a given prisoner’s
 23 habeas petition”). Section 2243, which governs issuance of the writ, states
 24 that “[t]he writ, or order to show cause shall be directed to *the* person having
 25 custody of the person detained.” 28 U.S.C. § 2243 (emphasis added). Not
 26 unlike 28 U.S.C. § 2242, Congress chose to use a definite article, “the,” to
 27 make clear that only one person can be said to maintain custody over the
 28 detained petitioner, and that person is the proper respondent to a core habeas
 challenge. *See Padilla*, 542 U.S. at 434–35, 124 S.Ct. 2711; *see also United*
States v. Lopez, 4 F.4th 706, 721 (9th Cir. 2021) (stating that “definite
 articles like ‘the’ restrict the noun that follows as particularized in scope or
 previously specified by context”). Accordingly, *Padilla* explained
 definitively who that one proper respondent is: “in habeas challenges to
 present physical confinement—‘core challenges’—the default rule is that
 the proper respondent is the warden of the facility where the prisoner is
 being held, not the Attorney General or some other remote supervisory
 official.” *See Padilla*, 542 U.S. at 435, 124 S.Ct. 2711.

109 F.4th 1188, 1195 (9th Cir. 2024). Thus, there is exclusively one proper respondent to a habeas
 petition and that is Petitioner’s immediate custodian. At the time of the filing of the Petition, the

1 immediate custodian was Respondent Sergio Albarran.

2 **F. Any Relief Besides Release from Custody Is Inappropriate in Habeas**

3 The only relief available in habeas is release from custody. The Supreme Court has long held
 4 that “the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*,
 5 411 U.S. 475, 484 (1973). In *Thuraissigiam*, the Supreme Court denied a habeas petition from an alien
 6 in immigration detention because he “seeks to use habeas to obtain something far different from simple
 7 release.” 591 U.S. at 121; *see also Munaf v. Geren*, 553 U.S. 674, 694 (2008) (denying a habeas petition
 8 because petitioners sought relief other than “simple release”). Any relief granted to Petitioner beyond
 9 “simple release” should be denied because “Claims so far outside the ‘core’ of habeas may not be
 10 pursued through habeas.” *Id.* at 119.

11 **G. Petitioner’s Immediate Custodian Can Only Provide Release from Custody**

12 Petitioner’s immediate custody cannot provide any relief besides release from custody.
 13 “Remedies...‘operate with respect to specific parties.’” *California v. Texas*, 593 U.S. 659, 672 (2021)
 14 (quoting *Murphy v. National Collegiate Athletic Assn.*, 138 S.Ct. 1461 1486 (2018) (Thomas, J.,
 15 concurring) (internal quotation marks omitted)). Ordering any other relief in this case, besides release
 16 from custody, would be inappropriate. Most relevant here, Petitioner’s immediate custodian lacks the
 17 capability and authority to conduct a pre-deprivation hearing. Thus, the Court cannot order Petitioner’s
 18 immediate custodian to conduct any such hearing.

19 **H. The Issue of Ultimate Relief Must Not Be Decided in A TRO**

20 The only appropriate relief sought by Petitioner in the motion for TRO, i.e., release from
 21 custody, is the same ultimate relief Petitioner seeks in the underlying habeas petition. Consequently, the
 22 relief Petitioner seeks in the motion for a TRO is not “temporary” or “preliminary” but rather it is
 23 effectively final judgment on the merits of the habeas petition. “[I]t is generally inappropriate for a
 24 federal court at the preliminary-injunction stage to give a final judgment on the merits.” *Univ. of Tex. v.*
 25 *Camenisch*, 451 U.S. 390, 395 (1981); *see also Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir.
 26 1992) (“[J]udgment on the merits in the guise of preliminary relief is a highly inappropriate result.”).
 27 This result is particularly inappropriate when the TRO granting ultimate relief is issued ex-parte, without
 28

1 the opportunity for Respondents to be heard by the Court.

2 Because Petitioner's motion for a TRO and habeas petition both seek release from future
3 detention, the Court must deny the motion for a TRO. *See, e.g., Rodas v. Samiea*, No. 5:26-cv-65, 2026
4 WL 184226, at *1 (C.D. Cal. Jan. 19, 2026) (denying petitioner's request for release from immigration
5 detention on motion for TRO because it is "duplicative of his request for that same relief on the merits");
6 *Aslan v. Wamsley*, No. 2:25-cv-2698, 2026 WL 84000, at *2 (W.D. Wash. Jan. 12, 2026) (denying
7 immigration habeas TRO seeking release because "[t]he appropriate vehicle for resolving Aslan's due
8 process claim is his habeas petition."); *Dzhanpolatov v. USCIS*, No. 25-cv-3314, 2025 WL 1652427, at
9 *2 (N.D. Cal. May 26, 2025) (denying a motion for TRO because "while characterized as preliminary
10 relief, Dzhanpolatov effectively seeks judgment on the merits."); *Chavez v. Murray*, No. 1:25-cv-198,
11 2025 WL 1017678, at *2 (E.D. Cal. Apr. 4, 2025) (denying a motion for TRO because it "seeks only to
12 alter the status quo by issuing an expedited order that would grant him the ultimate relief he seeks in his
13 petition."); *Keo v. Warden of Mesa Verde ICE Processing Ctr.*, No. 1:24-cv-919, 2024 WL 3970514, at
14 *2 (E.D. Cal. Aug. 28, 2024).

15 I. This Court Cannot Enjoin Petitioner's Removal from The United States

16 The Court lacks jurisdiction to enjoin respondents from removing Petitioner from the United
17 States. *See* Dkt. No. 6 at 4. Under 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause
18 or claim by or on behalf of any alien arising from the decision or action by the Attorney General to
19 commence proceedings, adjudicate cases, or execute removal orders against any alien under this
20 chapter." This jurisdictional bar applies to section 2241 of title 28 and any other habeas provision. *Id.*
21 Thus, as the Ninth Circuit has itself affirmed, if the Court grants a TRO, it should not include a
22 prohibition on the removal of Petitioner. *See Rauda v. Jennings*, 55 F.4th at 776-79 (holding that the
23 district court lacked jurisdiction in habeas to issue TRO enjoining an alien's removal pursuant to his
24 final order of removal).

25 The Court also lacks jurisdiction to enjoin removal under 8 U.S.C. § 1252(b)(9). *See Khalil v.*
26 *President, United States*, No. 25-2162, 2026 WL 111933, at *8 (3d Cir. Jan. 15, 2026). That subsection
27 provides: "Judicial review of all questions of law and fact... arising from any action taken or proceeding
28

brought to remove an alien from the United States ... shall be available only in judicial review of a final order [of removal].” *Id.* 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. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Accordingly, the only proper way for Petitioner to enjoin his removal is before the appropriate federal court of appeals in the form of a petition for review of a final removal order. Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e).

8 U.S.C. § 1252(a)(5). “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 also Vilorio v. Lynch*, 808 F.3d 764, 767 (9th Cir. 2015) (“It is well established that this court’s jurisdiction over removal proceedings is limited to review of final orders of removal.”).⁴ Habeas, then, is not the proper vehicle to enjoin removal.

J. The Court Cannot Prohibit Respondents from Transferring Petitioner Between Detention Facilities

The Court cannot order that Petitioner remain in the District. Dkt. No. 2-1 at 7-8, 16. 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,

⁴ The Ninth Circuit has held that, “By its terms, [§ 1252(b)(9)] does not apply to federal habeas corpus petitions that do not involve final orders of removal.” *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006). However, that decision predates and conflicts with *Jennings v. Rodriguez*, which noted that § 1252(b)(9) strips jurisdiction to “challeng[es] [to] the decision to detain [aliens] in the first place or to seek removal,” challenges to “any part of the process by which... removability will be determined,” and requests to “review... an order of removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Moreover, *Nadarajah* itself did not enjoin removal.

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-8296, 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).

Regardless of whether Petitioner is detained within the Northern District of California, no order from the Court preventing transfer is necessary to preserve this Court’s jurisdiction. *See* Dkt. No. 2-1 at 7. It is well-established that “when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner’s release.” *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). And even if Petitioner is transferred outside the District, the District Court will retain jurisdiction over the habeas petition. *See Ex Parte Endo*, 323 U.S. 283, 307 (1944). Thus, there is no basis for the Court to prohibit Petitioner’s transfer.

K. Respondents Should be Granted a Reasonable Amount of Time to Prepare their Return to the Habeas Petition

Because Petitioner’s request for ultimate relief can only be decided following consideration of full briefing on the underlying habeas petition, Respondents request that this Court set a reasonable briefing schedule so that Respondents’ counsel may review agency records and adequately prepare their response. *See, e.g., Aslan v. Wamsley*, 2026 WL 84000, at *1-3 (denying TRO seeking release from custody and permitting respondents eighteen days to file a return to the habeas petition).

L. Petitioner’s Detention Does Not Violate the Orders in *Garro Pinchi v. Noem*.

Petitioner is not part of the *Pinchi* class. This Court ordered that “Respondents are DIRECTED to address in their response why their actions are not enjoined and in direct violation of this Court’s and other recent decisions by courts around the nation, including the preliminary injunction issued in *Garro Pinchi v. Noem*, No. 25-cv-05632 PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).” Dkt. No. 6 at 4. Respondents have reviewed the decision cited by the Court and conclude that the *Pinchi* decision

certifying the class and subclass and staying DHS’s re-detention policy does not apply to the instant Petitioner.⁵ The *Pinchi* class covers, in relevant part, “All noncitizens in the jurisdiction of the San Francisco ICE Field Office who...are in removal proceedings under 8 U.S.C. § 1229a...” *Id.* at *12. Petitioner has a final order of removal and is thus not in removal proceedings.

M. Petitioner’s Detention Does Not Violate the Orders in *Pablo Sequen v. Albarran*

The Court’s order granting the TRO presumed that Petitioner was “held at 630 Sansome Street in San Francisco for more than 12 hours, which is independently concerning.” Dkt. No. 6 at 3; *see also Pablo Sequen v. Albarran*, No. 25-cv-6487, 2025 WL 3283283, at *29 (N.D. Cal. Nov. 25, 2025). However, Petitioner’s filings raise no claim of a violation of *Pablo Sequen*. Nevertheless, Respondents inform the Court that Petitioner arrived to 630 Sansome at approximately 3:00p.m. and left at approximately 5:24p.m. Renteria Decl. ¶ 9-10. This approximately two-and-a-half hour detention at 630 Sansome falls short of the “more than 12 hours” presumed by the Court.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court dissolve the TRO and dismiss Petitioner’s habeas petition.

Dated: March 4, 2026

Respectfully submitted,

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⁵ Though the Court refers to the “preliminary injunction” issued in *Pinchi*, Respondents found no such preliminary injunction issued on the date cited.