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

11 FULVIO CASTILLO GOMEZ,

12 Petitioner,

13 v.

14 SERGIO ALBARRAN, et al.,

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

RESPONDENTS' RESPONSE TO PETITIONER'S
MOTION FOR PRELIMINARY INJUNCTION

Hon. Noel Wise

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1 **I. INTRODUCTION**

2 Petitioner Fulvio Castillo Gomez (“Petitioner”) is an alien subject to a final order of removal. As
3 such, U.S. Immigration and Customs Enforcement lawfully detained him to execute the final order of
4 removal. However, Petitioner quickly filed with this Court a habeas petition and ex-parte temporary
5 restraining order (“TRO”) demanding his immediate release. In those initial filings, Petitioner claimed
6 that he had a pending U-visa, that he lacked criminal history, that he was a rider on his wife’s asylum
7 application, that he had never been served with a Notice to Appear, and that he was being illegally
8 detained under 8 U.S.C. § 1225(b)(2)(A). Though the Court initially gave Respondents the opportunity
9 to respond to Petitioner’s TRO, upon reassignment of the case, the Court granted the TRO without
10 hearing from Respondents and ordered Petitioner’s immediate release.

11 It turned out that Petitioner’s presentation of the case to the Court was completely inaccurate. In
12 reality, Petitioner has been subject to a final order of removal since May 2006 and has *not* been detained
13 or released since he was ordered removed. Petitioner has never provided his address to U.S. Immigration
14 and Customs Enforcement (“ICE”), who only became aware of Petitioner’s whereabouts in January
15 2026. Petitioner is therefore subject to detention under 8 U.S.C. § 1231(a). He was served with a Notice
16 to Appear in immigration court shortly after his illegal entry into the United States. He does not have a
17 pending U-visa application. In October 2025, he was arrested for driving under the influence. Despite
18 these subsequent revelations and Respondents’ attempts to have the TRO dissolved or updated, the
19 Court’s original TRO remains in effect. Petitioner now seeks to have that TRO converted into a
20 preliminary injunction.

21 Petitioner has not met his burden to obtain relief through a preliminary injunction. Petitioner is
22 not likely to succeed on the merits of his claim because his detention complied with the relevant statutes,
23 regulations, and the Constitution. As an initial matter, under 8 U.S.C. § 1252(g), this Court lacks
24 jurisdiction to hear Petitioner’s claim because it involves the execution of an order of removal.
25 Statutorily, Petitioner is subject to detention under 8 U.S.C. § 1231(a)(1)(C) because his failure to
26 provide an address to Respondents extends the removal period. Alternatively, Petitioner is subject to
27 detention under 8 U.S.C. § 1231(a)(6) because an immigration judge (“IJ”) has found him inadmissible

1 and ordered him removed. Constitutionally, Petitioner is not entitled to a pre-deprivation hearing
 2 because, as an alien not previously admitted, he is entitled only to the process due to him under the
 3 statutes, and the relevant statutes and regulations do not contemplate a pre-deprivation hearing.
 4 Petitioner's decades' long failure to provide an address, which prevented Respondents from executing
 5 the removal order, does not give rise to a constitutionally protected liberty interest. Moreover,
 6 Petitioner's case is not like other cases in this District where the Court has found that aliens released on
 7 an order of supervision have accrued a liberty interest that entitles them to a pre-deprivation hearing. At
 8 the time of his detention, Petitioner had never been released on an order of supervision.

9 Accordingly, Respondents request that the Court deny Petitioner's motion for a preliminary
 10 injunction.

11 **II. SUPPLEMENTAL FACTUAL AND PROCEDURAL BACKGROUND**

12 Respondents hereby incorporate the factual background previously addressed in their motion to
 13 dissolve the temporary restraining order ("TRO"). *See* Dkt. No. 9 at 8–9.

14 **A. Supplemental Factual Background**

15 In March 2006, when encountered by U.S. Customs and Border Protection ("CBP"), Petitioner
 16 was told, and understood, that he was required to attend a future court date. Dkt. No. 12-2 ¶ 3. CBP
 17 advised Petitioner that his first scheduled immigration court hearing would occur on May 2, 2006, at
 18 9:00a.m. in Harlingen, TX. Dkt. Nos. 9-1 ¶ 6; 9-2 at 3. On the same date, Petitioner was personally
 19 served with a Notice to Appear ("NTA") that contained the date, time, and location of his first scheduled
 20 immigration court hearing. Dkt. Nos. 9-1 ¶ 6, 9-2 at 5. Petitioner believes he was instead told to report to
 21 court six months later. Dkt. No. 12-2 ¶ 3. Petitioner has not alleged any attempts he made to clarify the
 22 specific date, time, or location of the future court date he believed to be six-months away. *Id.*

23 On March 4, 2006, CBP officers conducted a custody determination and determined Petitioner
 24 should be released. Suppl. Decl. of Deportation Officer Maika Rentería ("Rentería Suppl. Decl.") ¶ 5,
 25 Ex. 1. The custody determination form states "that **pending a final determination by the immigration**
 26 **judge in your case**, and in the event you are ordered removed from the United States, until you are
 27 taken into custody for removal, you shall be . . . released on your own recognizance." *Id.* (emphasis

1 added). Petitioner did not check in with ICE since his release on March 4, 2006, and had had no contact
 2 with ICE until he was arrested on March 2, 2026. Rentería Suppl. Decl. ¶ 6. On or about June 3, 2008,
 3 Petitioner's case was referred to an ICE Fugitive Operations team, which is tasked with locating,
 4 arresting, and removing aliens who have failed to leave the United States based upon a final order of
 5 removal, deportation or exclusion, or who has failed to report to ICE after receiving notice to do so. *Id.*
 6 ¶ 7. As of September 27, 2011, ICE had no current leads as to Petitioner's whereabouts. *Id.* ¶ 8. As of
 7 July 21, 2025, ICE had no new leads regarding Petitioner. *Id.* ¶ 9. On or about October 5, 2025, ICE
 8 Pacific Enforcement Response Center ("PERC") was informed of local law enforcement action taken
 9 against Petitioner. However, Petitioner appeared to have been released from law enforcement custody
 10 before any action could be taken by ICE, and no address was provided. *Id.* ¶ 10. On or about January 26,
 11 2026, ICE became aware of Petitioner's current address. *Id.* ¶ 11. On March 2, 2026, ICE arrested
 12 Petitioner pursuant to a warrant. *Id.* ¶ 12, Ex. 2.

13 Since his removal order was issued in 2006, Petitioner has filed his federal tax returns with the
 14 Internal Revenue Service ("IRS"). *See generally* Dkt. No. 20-6. He got married and obtained a marriage
 15 certificate from the State of California. Dkt. No. 20-5. Petitioner started a business and registered it with
 16 the City of San Jose, and Napa County, both in California. Dkt. Nos. 20-4; 20-11. Petitioner obtained a
 17 driver's license from the State of California. Dkt. No. 20-8 at 3. Petitioner's wife purportedly filed an
 18 application for asylum with either U.S. Citizenship and Immigration Services ("USCIS") or EOIR
 19 sometime in 2025 or 2026 with Petitioner's name listed as her spouse.¹ Dkt. No. 20-7. Asylum
 20 applications are not filed with ICE. *See I-589, Application for Asylum and for Withholding of Removal*,
 21 USCIS, <https://www.uscis.gov/i-589> ("You may not file your Form I-589 with USCIS if you are
 22 currently in EOIR proceedings[.] . . . You must file your Form I-589 with EOIR if you are currently in
 23 proceedings before an EOIR immigration judge"). There is no indication Petitioner has ever filed
 24 anything, nor had contact, with ICE since he was released in 2006.

25 Petitioner claims that in 2024, through an attorney he hired to investigate his immigration status,
 26

27 ¹ Notably, pages 9–12 of the asylum application are missing from the record, which would
 28 indicate where and when this application was filed. Dkt. No. 20-7. However, the application indicates
 it's "Edition 1/20/2025", so it must have been filed with either USCIS or EOIR after that date. *Id.*

he filed a Freedom of Information Act (“FOIA”) request with the Executive Office for Immigration Review (“EOIR” or “immigration court”) for “every record in your authority for the subject of the record, Fulvio Castillo Gomez (DOB: [REDACTED]).” Dkt. No. 20-8 at 5. EOIR responded that it “could not locate the record with the information provided”, and directed that Petitioner could “re-submit the request, providing the A-number, and/or at least one of the following: NTA date; date of entry; port of entry; date of hearing; location of hearing” and informed Petitioner that DHS “is the custodian . . . of records of a person’s immigration history” and that “EOIR is not the custodian of records for DHS or its components, nor does EOIR have access to DHS’s A-files”. *Id.* at 9. Petitioner then submitted two more FOIA requests that mirrored the first. *Id.* at 10, 14. Notably, Petitioner did not include any of the additional information that EOIR requested to locate the record, and filled in “0” for his A-number, instead of “‘000000000’ (nine zeroes)” as required on the form. *Id.* at 16. As such, EOIR responded that the “A-number [] provided does not appear in our database” and informed Petitioner that if he cannot find his A-number, the “approximate date and location of [his] immigration court hearing will be required for manual processing” Dkt. Nos. 20 at 6, n. 2; 20-8 at 19. From this record, it does not appear that Petitioner submitted a follow-up request with the required information. Additionally, it does not appear that Petitioner ever submitted a FOIA request to DHS, the custodian of his immigration records.

B. Procedural Background

On March 2, 2026, Petitioner filed the Habeas Petition and Motion For Temporary Restraining Order. See Dkt. No. 1, 2-1. That same day, the Court ordered Respondents to file a response by 12p.m. on Tuesday, March 3, 2026. Dkt. No. 3. On March 3, 2026, at 10:15a.m., the Court issued an Order Granting Temporary Restraining Order and ordered Petitioner’s immediate release. Dkt. No. 6. On March 4, 2026, pursuant to Federal Rule of Civil Procedure 65(b)(4), Respondents filed a motion to dissolve the TRO that was granted ex parte, which Petitioner opposed. Dkt. Nos. 9; 12. On March 5, 2026, this Court held a hearing on the motion to dissolve the TRO, at which both parties agreed to set a briefing schedule for a motion on a preliminary injunction. Dkt. Nos. 15; 17. As of this filing, the TRO still stands as originally written, indicating Petitioner has a pending U-visa, has no criminal history, and

has no reference to Petitioner's removal order. Dkt. No. 6.

III. LEGAL STANDARD

A. The Preliminary Injunction Standard

A preliminary 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." *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* 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 preliminary relief where the relief the plaintiff seeks 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-829, 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)).

B. Detention of Noncitizens Under 8 U.S.C. § 1231(a)

1 The detention of noncitizens subject to a final order of removal is governed under
2 8 U.S.C. § 1231. Section 1231(a)(2) provides that the government “shall detain” the noncitizen for a 90-
3 day “removal period,” the commencement of which can be triggered by various events in the
4 noncitizen’s proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). hereafter (the “post-removal period”), the
5 noncitizen “may be detained beyond the [90-day] removal period” if, among other things, he is
6 “inadmissible” or if the government determines that he is “a risk to the community or unlikely to comply
7 with the order of removal.” 8 U.S.C. § 1231(a)(6); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579
8 (2022); *Zadvydas v. Davis*, 533 U.S. 678, 688–89 (2001).

9 However, Section 1231(a) does not permit indefinite detention; rather, the Supreme Court has
10 held the government can detain noncitizens under Section 1231(a) only for “a period reasonably
11 necessary to bring about that alien’s removal from the United States”—presumptively six months. *See*
12 *Zadvydas*, 533 U.S. at 689. “After this 6-month period, once the alien provides good reason to believe
13 that there is no significant likelihood of removal in the reasonably foreseeable future, the Government
14 must respond with evidence sufficient to rebut that showing.” *Id.* at 701; *see also* 8 C.F.R. § 241.4.
15 Section 1231(a)(6) continues to authorize detention “until it has been determined that there is no
16 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 at 701. The
17 removal period is suspended beyond the 90-day period if the alien “conspires or acts to prevent the
18 alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C).

19 When removal is not reasonably foreseeable, continued detention is no longer authorized, but
20 “the alien’s release may and should be conditioned on any of the various forms of supervised release
21 that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a
22 violation of those conditions.” *Id.* at 700 (citing 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5). Continued
23 detention and release during the post-removal period is governed by Post Order Custody Review
24 (“POCR”) Regulations. 8 C.F.R. §241.4. The POCR regulations provide for periodic custody reviews by
25 ICE, at which the noncitizen is afforded certain protections, “including the rights to receive written
26 notice of the review, to submit information in writing to support release and to be assisted by any
27 individual of his or her choosing in preparing or submitting information in response to the notice.” *Diouf*

1 *v. Napolitano*, 634 F.3d 1081, 1089–90 (2011) (“*Diouf II*”); 8 C.F.R. §§ 241.4(h), (k). In addition, as
 2 often as once every three months between annual reviews, the detainee may submit a written request for
 3 release consideration based on a showing of material change. 8 C.F.R. § 241.4(k)(2)(iii).

4 While Section 1231(a)(6) contemplates release pursuant to an order of supervision in appropriate
 5 cases, the POCR Regulations also authorize ICE to return to custody a noncitizen “who has been
 6 released under an order of supervision or other conditions of release who violates the conditions of
 7 release.” 8 C.F.R. § 241.4(l)(1).

8 As noted above, detention during the 90-day removal period is mandatory; there is no
 9 entitlement to a bond hearing or discretionary relief. Nor does Section 1231(a) provide for a bond
 10 hearing for the noncitizen to challenge his detention during the post-removal period. *See Johnson v.*
 11 *Guzman Chavez*, 594 U.S. 523, 526 (2021); *Arteaga-Martinez*, 596 U.S. at 581. Noncitizens detained in
 12 the Ninth Circuit were, until recently, subject to a preliminary injunction imposed by the Court in
 13 *Aleman Gonzalez v. Barr*, 955 F.3d 762, 766 (9th Cir. 2020), *rev’d and remanded on other grounds sub*
 14 *nom. Garland v. Aleman Gonzalez*, 596 U.S. 543, (2022), which required individualized bond hearings
 15 before an immigration judge at which the government bears the burden of establishing that the
 16 noncitizen is a flight risk or will be a danger to the community for all noncitizens facing prolonged
 17 detention under section 1231(a)(6)—detention lasting six months and expecting to continue “more than
 18 minimally beyond six months.” *See Diouf II*, 634 F.3d at 1086, 1092 n.13. The Supreme Court has since
 19 clarified that such periodic bond hearings are not statutorily required, *Arteaga-Martinez*, 596 U.S. at
 20 581, and the injunction in *Aleman Gonzalez* has been vacated.²

21 **IV. ARGUMENT**

22 **A. Petitioner Is Unlikely To Succeed On The Merits Of His Claim**

23 **1. This Court Lacks Jurisdiction To Hear Petitioner’s Claim**

24 At the outset, there is clear and on point statutory authority stripping this Court of jurisdiction to
 25 hear Petitioner’s claim. *See* 8 U.S.C. § 1252(g). “Federal courts are courts of limited jurisdiction...They
 26

27 ² On February 3, 2026, the Court in *Aleman Gonzalez* granted a Stipulation to Vacate
 28 Preliminary Injunction and Stay Case. *See Aleman Gonzalez, et al, v. Bondi, et al.*, 3:18-cv-1869, Dkt.
 No. 155. (N.D. Cal. Mar. 27, 2018).

1 possess only that power authorized by Constitution and statute...which is not to be expanded by judicial
 2 decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (omitting citations).
 3 Though there is a presumption favoring review of agency action, that presumption is overcome
 4 “whenever the congressional intent to preclude judicial review is ‘fairly discernible in the statutory
 5 scheme.’” *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 351 (1984) (quoting *Data Processing Service v.*
 6 *Camp*, 397 U.S. 150, 157 (1970)).

7 Here, ICE lawfully detained Petitioner to execute an order of removal because Petitioner is
 8 subject to an administratively and judicially final order of removal.³ Under section 1252(g), “no court
 9 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision
 10 or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal
 11 orders against any alien under this chapter.” 8 U.S.C. § 1252(g) (emphasis added); see also *Reno v.*
 12 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (holding that § 1252(g) precluded
 13 judicial review of petitioners’ suit challenging Attorney General’s decision to commence proceedings).
 14 Section 1252(g) is thus “a clear statement of congressional intent to repeal habeas jurisdiction” over
 15 claims by aliens arising from the government’s decision or action to execute a removal order. *I.N.S. v.*
 16 *St. Cyr*, 533 U.S. 289, 298 (2001). Section 1252(g) squarely covers Petitioner’s claim.

17 This jurisdiction stripping provision is dispositive and fatal to Petitioner’s petition. Petitioner has
 18 waived any argument on the issue. Petitioner has been on notice regarding this Court’s lack of
 19 jurisdiction since Respondents’ first filing in this case. See Dkt. No. 9 at 18-19 (Motion to Dissolve
 20 TRO). Respondents raised this jurisdiction stripping provision at the hearing on March 5, 2026.
 21 However, Petitioner’s Motion For Preliminary Injunction does not address the issue. See Dkt. No. 20.
 22 Thus, Petitioner had notice of this issue and failed to respond to the issue, thereby waiving it. Petitioner
 23

24 ³ Petitioner claims that he “and counsel work on his Motion to Reopen.” Dkt. No. 20 at 14 n. 6.
 25 However, there is nothing in the record to indicate that any motion to reopen has been filed. Even if
 26 filed, the motion would be without merit. See 8 C.F.R. § 1003.23(b)(4)(ii) (“An order of removal entered
 27 in absentia... may be rescinded only upon a motion to reopen filed within 180 days after the date of the
 28 order of removal, if the alien demonstrates that the failure to appear was because of exceptional
 circumstances...An order entered in absentia...may be rescinded upon a motion to reopen filed at any
 time upon the alien's demonstration of lack of notice...”). Petitioner would not be able to demonstrate a
 lack of notice as the record clearly establishes that he was personally served with an NTA that contained
 the date, time, and location of his immigration court hearing. See Dkt. Nos. 9-1 ¶¶ 6, 9-2 at 5.

1 cannot address this issue for the first time in his reply brief. *See Zamani v. Carnes*, 491 F.3d 990, 997
2 (9th Cir. 2007) (“The district court need not consider arguments raised for the first time in a reply
3 brief.”).

4 **2. Petitioner’s Declarations Should Be Afforded Minimal Weight**

5 Throughout this litigation, Petitioner has demonstrated that he is not a credible relator of fact.
6 Petitioner’s initial filings to this Court claimed that he had a pending U-visa application, was a rider on
7 his wife’s asylum application, lacked criminal history, and had never been served with a Notice to
8 Appear. However, these factual assertions have all been disproven. Petitioner has since acknowledged
9 that he does not have a pending U-visa application. Respondents have submitted evidence showing that
10 Petitioner does have criminal history, specifically that on or about October 5, 2025, Petitioner was
11 arrested for driving under the influence, in violation of Cal. Veh. Code. §§ 23152(a), (b). *See* Dkt. No. 9-
12 1 ¶ 8. Petitioner has submitted his wife’s asylum application, Dkt. No. 20-7, but the box that indicates
13 whether Petitioner is to be included as a rider on the application is checked “No.” *Id.* at 3. Moreover, the
14 asylum application does not contain the date that it was submitted. Curiously, the final pages of the
15 application that would show the date it was signed or the date stamped copy from EOIR proving receipt
16 or the proof of mailing have all been omitted from the filing. Lastly, Petitioner initially claimed that he
17 “was never served with a Notice to Appear.” Dkt. No. 2-3 at 2; *see also* Dkt. No. 2-1 at 8. However,
18 once Respondents produced the Notice to Appear that was served on Petitioner, Petitioner submitted a
19 declaration that same day now remembering that he had in fact been served “with paperwork.” Dkt. No.
20 12-2 at 2. Taken as a whole, Petitioner’s history of unsupported factual assertions renders him not
21 credible. Accordingly, his declarations should be afforded minimal weight in the consideration of the
22 preliminary injunction.

23 **3. ICE’s Detention Of Petitioner Complied With The Relevant Statutes And** 24 **Regulations**

25 Petitioner is subject to detention under 8 U.S.C. § 1231(a)(1)(c). That section provides that the
26 mandatory detention period found in § 1231(a)(2)(A) “shall be extended beyond a period of 90 days and
27 the alien may remain in detention during such extended period if the alien...acts to prevent the alien’s
28

removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(c). Petitioner’s more than twenty years long violation of his legal obligation to provide Respondents with an address is exactly such an “act to prevent [his] removal subject to an order of removal.” *Id.*; *see also* Rentería Suppl. Decl. ¶ 6-11 (describing how Petitioner’s failure to provide ICE with an address prevented the agency from executing the removal order against Petitioner). Under 8 U.S.C. § 1305(a), Petitioner is required to provide the Attorney General with an address and must notify the Attorney General of each change of address within ten days. Petitioner was put on notice of this requirement when he was detained at the border and served with a Notice to Appear. *See* Dkt. Nos. 9-1 ¶ 6, 9-2 at 5. Failure to provide an updated address *is a crime*, specifically a federal misdemeanor, under 8 U.S.C. § 1306(b). Thus, Petitioner’s failure to comply with his statutory obligation to provide the government with an address was an act that extends the removal period and renders him subject to detention under 8 U.S.C. § 1231(a)(1)(c). *See* 8 C.F.R. § 241.4(g)(1)(ii) (establishing that “The removal period shall be extended until the alien demonstrates to the Service that he or she has complied with the statutory obligations.”).

Alternatively, Petitioner is subject to detention under 8 U.S.C. § 1231(a)(6). That section provides that “An alien ordered removed who is inadmissible under section 1182 of this title...may be detained beyond the removal period.” 8 U.S.C. § 1231(a)(6). On May 2, 2006, an Immigration Judge found Petitioner inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and ordered Petitioner removed. Dkt. Nos. 9-1 ¶ 6-7. Thus, Petitioner’s detention is squarely authorized by 8 U.S.C. § 1231(a)(6).

(i) Petitioner’s Arguments Alleging Statutory and Regulation Violations Are Completely Without Merit

Though he does not explain how or why, Petitioner appears to claim that ICE’s detention of Petitioner violated 8 U.S.C. § 1231(a)(3) and that this violation provides a basis for relief. *See* Dkt. No. 20 at 21. To begin, § 1231(a)(3) only applies upon the expiration of the removal period. However, as alleged above, Petitioner’s failure to provide an address, which is a violation of the criminal statute found in 8 U.S.C. § 1306(b), extends the removal period. Thus, the removal period has not expired and § 1231(a)(3) does not apply.

Even if the removal period had expired, § 1231(a)(3) only applies when the agency decides to release an alien from post-removal detention. As described above, Petitioner is also subject to detention

1 under § 1231(a)(6), which states that “An alien ordered removed who is inadmissible under section 1182
2 of this title,” such as Petitioner, “may be detained beyond the removal period and, if released, shall be
3 subject to the terms of supervision in” § 1231(a)(3). Because Petitioner has not yet been detained since
4 the issuance of the order of removal, § 1231(a)(3) does not apply. Respondents cannot be said to have
5 violated a statutory provision that does not apply.

6 Petitioner’s allegation of a regulatory violation under 8 C.F.R. § 241.4 is similarly without merit.
7 Petitioner commits basis errors of legal interpretation. The regulation Petitioner believes Respondents
8 were required to follow prior to his detention is titled “[c]ontinued detention of inadmissible, criminal,
9 and other aliens beyond the removal period.” 8 C.F.R. § 241.4 (emphasis added). But as explained
10 above, Petitioner had not yet been detained during the removal period, therefore ICE was not seeking to
11 “continue” that detention.

12 As Petitioner recognizes, these regulations “apply to anyone ‘released under an order of
13 supervision or other conditions of release.’” Dkt. No. 20 at 21 (quoting 8 C.F.R. § 241.4(l)). But of
14 course, Petitioner was *not* released under an order of supervision or other conditions of release after the
15 removal order was issued because there was no detention after the removal order was issued.

16 Petitioner’s quotation of the regulation leaves out important restricting language: “*Any alien*
17 *described in paragraph (a) or (b)(1) of this section* who has been released under an order of supervision
18 or other conditions of release who violates the conditions of release may be returned to custody.” 8
19 C.F.R. § 241.4(l). Section 241.4(a)(1)-(4) all refer to “an alien ordered removed.” Section 241.4(a) refers
20 to “custody beyond the removal period” and “The authority to continue an alien in custody or grant
21 release or parole under” § 1231(a)(6), which governs detention of aliens ordered removed. Section
22 241.4(b)(1) states that:

23 An alien who has filed a motion to reopen immigration proceedings for
24 consideration of relief from removal, including withholding or deferral of
25 removal pursuant to 8 CFR 208.16 or 208.17, shall remain subject to the
26 provisions of this section unless the motion to reopen is granted. Section
236 of the Act and 8 CFR 236.1 govern custody determinations for aliens
who are in pending immigration proceedings before the Executive Office
for Immigration Review.

27 8 C.F.R. § 241.4(b)(1). Thus, even aliens who have pending motions to reopen are still subject to the
28

1 provisions governing aliens ordered removed. Moreover, § 241.4(b)(1) reiterates that § 1226, which is
 2 the authority for release of recognizance, only applies to aliens in immigration proceedings i.e. not those
 3 already ordered removed. Accordingly, Petitioner is not covered by 8 C.F.R. § 241.4(l) because he has
 4 not been released on an order of supervision or other conditions of release *after being ordered removed*.

5 Petitioner claims that “Petitioner’s release on recognizance counts as ‘other conditions of
 6 release.’”⁴ Dkt. No. 20 at 21. But as is well established, release on recognizance covers release “pending
 7 a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a); *see also*
 8 *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (noting that “release on
 9 recognizance” is another name for “conditional parole” under § 1226(a)). That decision on whether
 10 Petitioner is to be removed from the United States was made twenty years ago. Thus, the release on
 11 recognizance has not been operative since May 2006.

12 **4. Petitioner Is Not Likely To Succeed On His Due Process Claim**

13 Petitioner’s detention did not violate the Due Process Clause of the Fifth Amendment to the
 14 United States Constitution. *See* Dkt. No. 6 at 3. Respondents do not dispute that Petitioner has a right to
 15 due process of law. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022) (“‘The Fifth
 16 Amendment entitles aliens to due process of law in deportation proceedings.’”) (quoting *Hussain v.*
 17 *Rosen*, 985 F.3d 634, 642 (9th Cir. 2021)). However, Respondents dispute the extent of Petitioner’s due
 18 process rights regarding his immigration detention. Petitioner is not owed immediate release or a pre-
 19 deprivation hearing before a neutral decisionmaker prior to any detention. Dkt. No. 6 at 4.

20 The Supreme Court has been clear that aliens similarly situated to Petitioner do not have a
 21 constitutional right to procedures beyond those afforded to them by statute. In *Dep’t of Homeland Sec. v.*
 22 *Thuraissigiam*, the Supreme Court addressed the procedural due process rights of aliens like Petitioner,
 23 i.e. those detained shortly after entering the United States without admission. 591 U.S. 103, 138-40
 24 (2020). The Supreme Court stated that these aliens have “no entitlement to procedural rights other than
 25 those afforded by statute.” *Id.* at 107. The Supreme Court noted that this principle was not unique to its

26
 27 ⁴ It is clear from the language of 8 C.F.R. § 241.4(a) that the “other conditions of release”
 28 mentioned in 8 C.F.R. § 241.4(l) refers to release on parole of an alien ordered removed under 8 U.S.C.
 § 1182(d)(5)(A).

1 decision in *Thuraissigiam* but instead was supported by “more than a century of precedent.” *Id.* at 138
2 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*,
3 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953);
4 *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

5 Petitioner’s reliance on *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), for a claimed due process
6 right to a pre-detention hearing on flight risk or danger to the community is mistaken. *See* Dkt. No. 20 at
7 21. Petitioner’s brief detention does not come close to raising the same concerns of prolonged detention
8 that motivated the Court’s decision in *Zadvydas*. Petitioner filed his habeas petition the same day he was
9 detained. The Court in *Zadvydas*, however, held that *six months of detention* for aliens ordered removed
10 is presumptively constitutional. In other words, the due process protections regarding post-removal
11 detention do not kick in until detention reaches the six-month mark.

12 Absent an identified event giving rise to a constitutionally protected liberty interest, Petitioner’s
13 claim can only proceed as a facial challenge to the constitutionality of detention under 8 U.S.C. § 1231.
14 Ordering immediate release on due process grounds requires the Court to make the extraordinary finding
15 that *all aliens subject to detention under 8 U.S.C. § 1231 are entitled to a pre-deprivation hearing prior*
16 *to their detention*. However, there is no precedent for this claim. Thus, it is surely *unlikely* that Petitioner
17 will prevail on this due process claim.

18 Petitioner’s demand that the Court enjoin Respondents from re-detaining him unless they
19 demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence, that Petitioner is a
20 flight risk or danger to the community is without basis in law. Dkt. No. 20 at 25. The Supreme Court has
21 made clear that “there is no plausible construction of the text of § 1231(a)(6) that requires the
22 Government to provide bond hearings before immigration judges after six months of detention, with the
23 Government bearing the burden of providing by clear and convincing evidence” that a detained alien
24 poses a flight risk and a danger to the community. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581
25 (2022). Just as § 1231(a)(6) “does not address or even hint at the requirements,” for a bond hearing
26 following the six-month mark of immigration detention, *id.* at 580–81 (quotation omitted), it similarly
27 does not require a hearing before immigration authorities can detain an alien subject to a removal order.

1 See 8 U.S.C. § 1231(a)(6). The INA grants immigration authorities the operational discretion and legal
 2 authority to take the actions necessary to effectuate the deportation of aliens illegally in the United
 3 States and ordered removed. As regards burden, it is well established that aliens must bear the burden at
 4 any hearing regarding their release from detention. *See Matter of Guerra*, 24 I. & N. Dec. 37 (BIA
 5 2006).

6 The Due Process Clause does not prohibit Petitioner's re-detention.⁵ Although the Fifth
 7 Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause
 8 "consistent with longstanding precedent recognizing that the process due aliens must account for the
 9 government's countervailing interests in immigration enforcement – considerations that do not apply to
 10 U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th at 1205-06. It is well-established that "Congress
 11 may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S.
 12 510, 522 (2003). This is true because "any policy toward aliens is vitally and intricately interwoven with
 13 contemporaneous policies in regard to the conduct of foreign relations, the war power, and the
 14 maintenance of a republican form of government, which are core sovereign powers." *Id.*

15 **(i) Petitioner Lacks A Constitutionally Protected Liberty Interest**

16 Petitioner argues that he accrued a liberty interest in the twenty years since CBP previously
 17 released him on an order of recognizance, despite the subsequent issuance of the removal order. Dkt.
 18 No. 20 at 10. Petitioner believes the government made an active decision not to detain Petitioner in the
 19 twenty years since he's been in the United States. *Id.* at 9. Petitioner failed to provide his address, as he
 20 was legally required to do, and therefore contends ICE's inability to locate him provides him with a
 21 liberty interest to be free from arrest. Dkt. No. 20 at 13; *see also* 8 U.S.C. §§ 1305(a) (requiring aliens to
 22 update their address in writing with the Attorney General within ten days), 1306(b) (providing criminal
 23 penalties for an alien's failure to update their address). Petitioner believes he provided his friend's
 24 address when he was released in 2006, a fact he recalls twenty years later. Dkt. No. 12-2 ¶ 4. However,
 25 contemporaneous documents belie that assertion. *See* Dkt. No. 9-2 at 1, 3, 5 (Form I-213 relaying that
 26

27 ⁵ 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.

1 Petitioner claims to be traveling to Houston but failed to provide an address, NTA listing address as
2 “Failed to Provide”); Rentería Suppl. Decl., Ex. 1. (“Failed to Provide” listed under where Petitioner’s
3 address should be).

4 Petitioner argues that he could not have learned about his removal order on his own because he
5 “lost the document that contained his [A-number], and without that number, this removal order remained
6 hidden.” Dkt. No. 20 at 13. Petitioner believed he was told to report to immigration court six months
7 after he was encountered in March 2006. Dkt. No. 12-2 ¶ 3. At any time after that, Petitioner could have
8 gone to a local ICE office to check-in and get more information about this required court date, and
9 would seemingly either have learned about the upcoming court date or learned about his in absentia
10 removal order, which he could then quickly attempt to rectify. Instead, Petitioner lost his documents
11 with important information and seemingly decided nothing more needed to be done. Petitioner’s claim
12 that his loss of documents that contain his A-number absolves him from any immigration consequences
13 is entirely without merit. Petitioner’s removal order was not hidden, but could have been discovered
14 with the exercise of minimal due diligence.

15 Petitioner’s assertion that ICE could have identified him at any time in the past twenty years
16 relies on his submission of documents with his personal information to various state and federal
17 agencies. *See* Dkt. No. 20 at 6–7. However, it is unclear how Petitioner’s filings with state agencies
18 would allow ICE to glean the information about Petitioner, Petitioner’s submissions to federal agencies,
19 including his FOIA requests in 2024 and his wife’s application for asylum sometime after January 20,
20 2025, were never submitted to ICE, and Respondents are unaware of any information sharing
21 agreements between ICE and those agencies for these specific situations.

22 Petitioner has filed his federal tax returns with the IRS since around 2007. *See generally* Dkt.
23 No. 20-6. But Petitioner’s tax returns did not put ICE on notice regarding his location. The IRS has very
24 strict regulations regarding confidentiality and disclosure of tax return information, generally requiring
25 “the grant of an ex parte order by a Federal district court judge” prior to disclosure to an officer or
26 employee of a Federal agency. 26 U.S.C. § 6103(i)(1)(A). On April 7, 2025, ICE and IRS entered into a
27 Memorandum of Understanding (“MOU”) that set out terms for information sharing between the two
28

1 agencies. *See generally* Memorandum of Understanding Between the U.S. Dept. of the Treasury and the
 2 U.S. Dep't of Homeland Sec. (Apr. 7, 2025), [https://embed.documentcloud.org/documents/25889274-](https://embed.documentcloud.org/documents/25889274-mou-0408/?embed=1)
 3 [mou-0408/?embed=1](https://embed.documentcloud.org/documents/25889274-mou-0408/?embed=1). Prior to this MOU, the IRS generally did not share taxpayer information except
 4 under very specific circumstances. Even under this MOU, ICE needs to submit the names *and addresses*
 5 of suspected aliens illegally present in the United States to the IRS for cross-verification against tax
 6 records. *See* Fatima Hussein, *Court says the IRS can continue to share immigrants' taxpayer data with*
 7 *ICE*, Federal News Network (Feb. 25, 2026, 5:29 PM),
 8 [https://federalnewsnetwork.com/litigation/2026/02/court-says-the-irs-can-continue-to-share-immigrants-](https://federalnewsnetwork.com/litigation/2026/02/court-says-the-irs-can-continue-to-share-immigrants-taxpayer-data-with-ice/)
 9 [taxpayer-data-with-ice/](https://federalnewsnetwork.com/litigation/2026/02/court-says-the-irs-can-continue-to-share-immigrants-taxpayer-data-with-ice/). Without ICE's knowledge of Petitioner's address, the agency could not have
 10 submitted such a request to the IRS even after the MOU was in place.

11 Next, Petitioner claims ICE "created a significant liberty interest" when DHS released him,
 12 "failed to communicate to him when his court hearing was", and failed to serve the in absentia removal
 13 order. Dkt. No. 20 at 7. First, Petitioner was informed that he was required to provide a valid address
 14 within five days of acquiring one yet failed to do so. Dkt. No. 9-2 at 3. Second, Respondents clearly
 15 communicated to Petitioner the time and place of immigration court hearing. *Id.* at 3, 5. Finally,
 16 Petitioner provides no support for the claim that "Respondents failed to serve [the removal order],
 17 despite the requirement to serve all court records." Dkt. No. 20 at 7. Service of documents in
 18 immigration court is governed by the regulations, but only refers to service on the opposing party of
 19 documents filed with the immigration court, and not by documents issued by the court itself. *See* 8
 20 C.F.R. § 1003.32. Prior to EOIR's use of electronic filing in 2018, service could be completed by mail
 21 or in-person during a hearing. *See generally* OCIJ Immigration Court Practice Manual, Chapter 2.2(c)
 22 (updated Feb. 10, 2026), <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-2-2>. Even
 23 assuming these regulation governed service of the in absentia removal order on Petitioner, service would
 24 not be possible as he was not present at the hearing at which he was ordered removed, and he did not
 25 provide an address to which the removal order could be served. Thankfully, the regulations contemplate
 26 such a scenario: "A written copy of the [IJ] decision will not be sent to an alien who has failed to
 27 provide a written record of an address." 8 C.F.R. § 1003.37(b). Therefore, because Petitioner never
 28

1 provided an address, there was no requirement that Respondents serve Petitioner with the in-absentia
2 removal order.

3 That Petitioner has acted to evade the execution of his removal order for twenty years does not
4 somehow render the removal order without effect. In other words, Petitioner's removal order has not
5 "expired." Removal orders even older than Petitioner's are routinely enforced. *See, e.g., Vo v. Albarran*,
6 No. 26-cv-1489, 2026 WL 483056 (N.D. Cal. Feb. 20, 2026) (Petitioner ordered removed in 2000, ICE
7 seeking to execute the order in 2026); *see also* 8 C.F.R. § 1003.23(b)(4)(ii) ("An order entered in
8 absentia pursuant to [8 U.S.C. § 1229a(b)(5)] may be rescinded upon a motion to reopen filed at any
9 time upon the alien's demonstration of lack of notice"). Finality of removal orders is generally governed
10 by 8 C.F.R. § 1241.1 (defining final orders of removal) and 8 C.F.R. § 1240.15 ("no appeal shall lie
11 from an order of removal entered in absentia."). There is no statute or regulation that sets an expiration
12 date for final order by IJs.

13 Though Petitioner attempts to rely on *Kharitonova v. Albarran* for his alleged liberty interest,
14 that case can be readily distinguished. No. 3:26-cv-1362, 2026 WL 531441 (N.D. Cal. Feb. 25, 2026). In
15 *Kharitonova*, the Court found a liberty interest developed due to ICE's previous decisions not to detain
16 the petitioner, who was in removal proceedings at the time of her detention. *Id.* at *2. However, here,
17 ICE has never had the opportunity to even make the decision to detain Petitioner after he was ordered
18 removed because he failed to provide an address where he could be located. Additionally, although he
19 may have had a liberty interest when he was originally released on recognizance, "the statutory basis for
20 Petitioner's detention has changed" and so his "liberty interest is not the same as when he was detained
21 under 1226(a)". *Aguilar Garcia v. Kaiser*, No. 3:25-cv-5070, 2025 WL 2998169, at *4 (N.D. Cal. Oct.
22 24, 2025).

23 **(ii) Even Under the *Mathews v. Eldridge* Test, Petitioner Is Unlikely To**
24 **Succeed**

25 Even if Petitioner does have a constitutionally protected liberty interest, he is unlikely to prevail
26 on his claim. Assuming the factors set forth in *Mathews v. Eldridge* apply in this context to determine
27 whether procedural protections satisfy the Due Process Clause,⁶ the Court considers the following the

28 ⁶ The Supreme Court when confronted with constitutional challenges to immigration detention
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1 three factors: (1) the private interest that will be affected by the official action; (2) the risk of an
2 erroneous deprivation of such interest through the procedures used, and the probable value, if any, of
3 additional or substitute procedural safeguards; (3) the Government's interest, including the function
4 involved and the fiscal and administrative burdens that the additional or substitute procedural
5 requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *Mathews* is not a bright-line
6 test, but a flexible standard that must account for the heightened governmental interest in the
7 immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)
8 (citing cases).

9 The first factor favors Respondents because Petitioner's liberty interest is low. Petitioner entered
10 this country illegally and was ordered removed *twenty years ago*. He has no prior release from
11 immigration detention since being ordered removed. There is no further legal impediment to his removal
12 from the United States except this case.

13 The second *Mathews* factor also favors Respondents. In the context of an alien with a final order
14 of removal, the risk of erroneous deprivation is relatively low. Here, Petitioner is subject to a final order
15 of removal, Petitioner has no avenue of relief that would prevent his removal, § 1231(a)(6) explicitly
16 authorizes Petitioner's detention in order to effectuate his removal order, and *Zadvydas* permits his
17 detention for up to six months to effectuate his removal. Due Process does not mandate procedures that
18 reduce the risk of erroneous deprivation to zero, a result that is beyond grasp. *Rodriguez Diaz*, 53 F.4th
19 at 1213. It is also not clear what exactly Respondents would need to be prove at a pre-detention hearing.
20 Respondents seek Petitioner's detention so that Respondents may execute the order of removal against
21 Petitioner. Petitioner demands a hearing on whether he is a danger or a flight risk. But there is no
22 requirement under the immigration laws or the constitution restricting the execution of an order of
23 removal to only those aliens additionally determined to be a danger or flight risk. Furthermore,
24 Petitioner does not contest that he has a judicially and administratively final order of removal entered
25 against him.

26
27 _____
28 has not resolved them through express application of *Mathews*. See *Rodriguez Diaz*, 53 F.4th at 1206
(9th Cir. 2022) (citing Supreme Court cases).

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5:26-cv-01790-NW

1 The final factor weighs decisively in Respondents' favor. The government has a strong interest
 2 in preventing aliens from remaining in the United States in violation of our law and, to this end, in
 3 executing a final order of removal. *See Roderiguez Diaz*, 53 F.4th at 1208. Once the government moves
 4 to execute a final order of removal, there should not be any additional hurdles, such as a pre-detention
 5 hearing, to effectuate what is already a final order. The pre-detention hearing that Petitioner requests is
 6 essentially a judicially created stay of a final order of removal. District courts cannot provide injunctive
 7 relief to enjoin or forestall the execution of removal orders via habeas cases and the courts should not be
 8 permitted to do indirectly that what they are prohibited from doing directly. *See Rauda v. Jennings*, 55
 9 F.4th 773, 777–78 (9th Cir. 2022) (finding the district court cannot enjoin removal via a habeas
 10 petition).; *see also Reyes-Aguilar v. United States Dep't of Homeland Security*, No. 2012 WL 12849082
 11 (C.D. Cal. Oct. 10, 2012) (citing cases that find a district court cannot halt the execution of an order of
 12 removal).

13 On balance, if applied, the *Mathews* factors weigh decisively in Respondents' favor.

14 **(iii) Petitioner's Substantive Due Process Argument Is Without Merit**

15 Petitioner claims that ICE's detention of Petitioner violated his substantive due process rights
 16 because the detention "serves no legitimate non-punitive goal." Dkt. No. 20 at 23. But Petitioner misses
 17 the elephant in the room. As Respondents have insisted from the outset in this litigation, ICE detained
 18 Petitioner to execute the order of removal against Petitioner. It is not clear if Petitioner wishes to claim
 19 that the execution of a removal order is not a legitimate non-punitive goal. Petitioner does not say that
 20 directly, likely for good reason. Petitioner cites to the concurrence in *Demore v. Kim*, 538 U.S. 510, 532–
 21 33 (2003), and quotes Justice Kennedy for the proposition that detention "not to facilitate deportation, or
 22 to protect against risk of flight or dangerousness, but to incarcerate for other reasons" violates
 23 substantive due process. However, detention "to facilitate deportation" is exactly what gave rise to the
 24 instant litigation. Thus, by Petitioner's own authority, ICE's detention of Petitioner to facilitate his
 25 removal does not violate substantive due process.

26 **B. Petitioner Has Not Met His Burden to Show Likely Irreparable Harm Without**
 27 **Immediate Injunctive Relief**

28 Petitioner has not articulated an irreparable harm that can only be remedied with immediate

injunctive relief. Because Petitioner's detention complied with the statutes, regulations, and the Constitution, there is no unlawful deprivation of physical liberty nor a deprivation of constitutional rights. *See* Dkt. No. 20 at 25. Immigration laws have long authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523–26. “Detention is necessarily a part of [the] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”).

C. The Balance of Equities and Public Interest Favor Respondents

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

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

D. All Named Respondents Besides the Immediate Custodian Must Be Stricken

RESP. TO MOT. FOR PRELIM. INJ.

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

Section 2242 states that habeas petitions "shall allege the facts concerning the applicant's commitment or detention, the name of *the* person who has custody over him and by virtue of what claim or authority, if known." 28 U.S.C. § 2242 (emphasis added). The plain text of the federal habeas implementation provision delineates that petitions must include the name of "the" person maintaining custody over the petitioner, *id.*, implying that there is typically only one proper respondent to a habeas petition. *See [Rumsfeld v. Padilla, 542 U.S. 426, 434 (2004)]* (stating that "[t]he consistent use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner's habeas petition"). Section 2243, which governs issuance of the writ, states that "[t]he writ, or order to show cause shall be directed to *the* person having custody of the person detained." 28 U.S.C. § 2243 (emphasis added). Not unlike 28 U.S.C. § 2242, Congress chose to use a definite article, "the," to make clear that only one person can be said to maintain custody over the 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 immediate custodian was Respondent Sergio Albarran.

E. Any Relief Besides Release from Custody Is Inappropriate in Habeas

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

1 pursued through habeas.” *Id.* at 119.

2 **1. Petitioner’s Immediate Custodian Can Only Provide Release from Custody**

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

10 **2. The Issue of Ultimate Relief Must Not Be Decided in a Preliminary Injunction**

11 The only appropriate relief sought by Petitioner in the motion for a preliminary injunction, i.e.,
 12 release from custody, is the same ultimate relief Petitioner seeks in the underlying habeas petition.
 13 Consequently, the relief Petitioner seeks in the motion for a preliminary injunction is not “preliminary”
 14 but rather it is effectively final judgment on the merits of the habeas petition. “[I]t is generally
 15 inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the
 16 merits.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *see also Senate of Cal. v. Mosbacher*,
 17 968 F.2d 974, 978 (9th Cir. 1992) (“[J]udgment on the merits in the guise of preliminary relief is a
 18 highly inappropriate result.”).

19 Because Petitioner’s motion for a preliminary and habeas petition both seek release from
 20 detention, the Court must deny the motion for a preliminary injunction. *See, e.g., Rodas v. Samiea*, No.
 21 5:26-cv-65, 2026 WL 184226, at *1 (C.D. Cal. Jan. 19, 2026) (denying petitioner’s request for release
 22 from immigration detention on motion for TRO because it is “duplicative of his request for that same
 23 relief on the merits”); *Aslan v. Wamsley*, No. 2:25-cv-2698, 2026 WL 84000, at *2 (W.D. Wash. Jan. 12,
 24 2026) (denying immigration habeas TRO seeking release because “[t]he appropriate vehicle for
 25 resolving Aslan’s due process claim is his habeas petition.”); *Dzhanpolatov v. USCIS*, No. 25-cv-3314,
 26 2025 WL 1652427, at *2 (N.D. Cal. May 26, 2025) (denying a motion for TRO because “while
 27 characterized as preliminary relief, Dzhanpolatov effectively seeks judgment on the merits.”); *Chavez v.*
 28

1 *Murray*, No. 1:25-cv-198, 2025 WL 1017678, at *2 (E.D. Cal. Apr. 4, 2025) (denying a motion for TRO
 2 because it “seeks only to alter the status quo by issuing an expedited order that would grant him the
 3 ultimate relief he seeks in his petition.”); *Keo v. Warden of Mesa Verde ICE Processing Ctr.*, No. 1:24-
 4 cv-919, 2024 WL 3970514, at *2 (E.D. Cal. Aug. 28, 2024).

5 **3. This Court Cannot Enjoin Petitioner’s Removal from The United States**

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

15 The Court also lacks jurisdiction to enjoin removal under 8 U.S.C. § 1252(b)(9). *See Khalil v.*
 16 *President, United States*, No. 25-2162, 2026 WL 111933, at *8 (3d Cir. Jan. 15, 2026). That subsection
 17 provides: “Judicial review of all questions of law and fact... arising from any action taken or proceeding
 18 brought to remove an alien from the United States ... shall be available only in judicial review of a final
 19 order [of removal].” *Id.* Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial
 20 review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance.
 21 *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Accordingly, the only
 22 proper way for Petitioner to enjoin his removal is before the appropriate federal court of appeals in the
 23 form of a petition for review of a final removal order. Moreover, § 1252(a)(5) provides that a petition for
 24 review is the exclusive means for judicial review of immigration proceedings:

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

1 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether
 2 legal or factual—arising from *any* removal-related activity can be reviewed only through the [petition-
 3 for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see*
 4 *also Viloria v. Lynch*, 808 F.3d 764, 767 (9th Cir. 2015) (“It is well established that this court’s
 5 jurisdiction over removal proceedings is limited to review of final orders of removal.”).⁷ Habeas, then, is
 6 not the proper vehicle to enjoin removal.

7 **4. The Court Cannot Prohibit Respondents from Transferring Petitioner** 8 **Between Detention Facilities**

9 The Court cannot order that Petitioner remain in the District. Dkt. No. 20 at 27. Decisions
 10 regarding the place of confinement of aliens subject to removal orders or awaiting a decision on removal
 11 are committed to the discretion of the Secretary pursuant to 8 U.S.C. § 1231(g)(1). *Comm. of Cent. Am.*
 12 *Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986) (recognizing the “Attorney General’s broad
 13 discretion in exercising his authority to choose the place of detention for deportable aliens.”). As such,
 14 the decision to transfer an alien from one detention center to another is not judicially reviewable.
 15 *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 691 (9th Cir. 2003); *Avilez v. Barr*, No. 19-cv-
 16 8296, 2020 WL 570987, at *2 (N.D. Cal. Feb. 5, 2020). “Congress vested [DHS] with authority to
 17 enforce the nation’s immigration laws . . . ICE necessarily has the authority to determine the location of
 18 detention of an alien in deportation proceedings . . . and therefore, to transfer aliens from one detention
 19 center to another.” *Calla-Collado v. Att’y Gen.*, 663 F.3d 680, 685 (3d Cir. 2011); *Gandarillas-*
 20 *Zambrana v. BIA*, 44 F.3d 1251, 1256 (4th Cir. 1995) (internal citations omitted).

21 Regardless of whether Petitioner is detained within the Northern District of California, no order
 22 from the Court preventing transfer is necessary to preserve this Court’s jurisdiction. *See* Dkt. No. 20 at
 23 27. It is well-established that “when the Government moves a habeas petitioner after she properly files a

24
 25 ⁷ The Ninth Circuit has held that, “By its terms, [§ 1252(b)(9)] does not apply to federal habeas
 26 corpus petitions that do not involve final orders of removal.” *Nadarajah v. Gonzales*, 443 F.3d 1069,
 27 1075 (9th Cir. 2006). However, that decision predates and conflicts with *Jennings v. Rodriguez*, which
 28 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.

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.

F. Petitioner's Arrest Did Not Violate The Fourth Amendment

Respondents detained Petitioner based on a valid Form I-200, Warrant for Arrest of Alien. Rentería Suppl. Decl. ¶ 12, Ex. 2. Thus, Petitioner's claim that he suffered a warrantless arrest is without merit. Dkt. No. 20 at 23. Moreover, Petitioner's claim, unsupported by citation to any legal authority, that arrest "by officers who were wearing masks and who seized him outside a bank without warning" somehow rises to the level of an unconstitutional "use of force" is absurd on its face and must be rejected. *Id.* at 24.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Petitioner's motion for a preliminary injunction.

Dated: April 10, 2026

Respectfully submitted,

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