

1 CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
2 PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
3 WILLIAM SKEWES-COX (DCBN 1780431)
Special Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
Telephone: (415) 436-7066
6 FAX: (415) 436-7000
William.skewes-cox@usdoj.gov

7 *Attorneys for Respondents*

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

11
12 FULVIO CASTILLO GOMEZ,

13 Petitioner,

14 v.

15 SERGIO ALBARRAN, et al.,

16 Respondents.

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

**RESPONDENTS' BRIEF IN OPPOSITION TO
CONVERTING PRELIMINARY INJUNCTION
TO FINAL JUDGMENT**

Hon. Noel Wise

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1 **I. INTRDOCUTION**

2 Respondents respectfully request that the Court not convert the preliminary injunction into a
3 final judgment. Respondents detained Petitioner to execute a judicially and administratively final order
4 of removal. Under 8 U.S.C. § 1252(g), that fact alone strips this Court of jurisdiction to hear Petitioner's
5 claim. Following the request of the Court, Respondents in this brief submit further legal authority in
6 support of this claim.

7 This Court also lacks jurisdiction to consider Petitioner's attacks on the validity of the removal
8 order due to a claimed lack of notice. Under 8 U.S.C §§ 1252(a)(5) and (b)(9), all questions going to the
9 validity of removal order must be channeled into a petition for review with the relevant court of appeals.
10 Additionally, Petitioner can seek review through a motion to reopen the removal order with the
11 corresponding immigration court.

12 Even on the merits of his claim, Petitioner's arguments are unavailing. Petitioner's detention is
13 authorized under 8 U.S.C. § 1231. Petitioner is subject to mandatory detention because § 1231(a)(1)(C)
14 tolls the removal period due to Petitioner's failure to adhere to his affirmative duty under 8 U.S.C. §§
15 1305 and 1306 to provide the government with a current address, thereby thwarting the government's
16 ability to enforce the removal order. Alternatively, § 1231(a)(6) authorizes Petitioner's detention
17 because Petitioner is inadmissible. Petitioner's contrary interpretation of § 1231(a)(6) that prohibits first
18 time detentions after the removal period is untenable.

19 Lastly, even if Petitioner had a constitutionally protected liberty interest in remaining out of
20 custody, under the *Mathews* test his claims fails. Petitioner's liberty interest is minimal, there is no risk
21 of erroneous deprivation, and the government has a weighty interest in the prompt execution of removal
22 orders without extraneous procedural hurdles.

23 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

24 Respondents hereby incorporate the factual background and procedural history previously stated
25 in their motion to dissolve the temporary restraining order and in their opposition to the motion for
26 preliminary injunction. *See* Dkt. No. 9, 21.

27 **III. ARGUMENT**

28 **A. Petitioner Has Not Met His Burden Of Establishing Subject-Matter Jurisdiction**

Petitioner cannot overcome the clear statement of congressional intent to repeal habeas jurisdiction over his claim. “Federal courts are courts of limited jurisdiction...They possess only that power authorized by Constitution and statute...which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (omitting citations). Though there is a presumption favoring review of agency action, that presumption is overcome “whenever the congressional intent to preclude judicial review is ‘fairly discernible in the statutory scheme.’” *Block v. Cnty. Nutrition Inst.*, 467 U.S. 340, 351 (1984) (quoting *Data Processing Service v. Camp*, 397 U.S. 150, 157 (1970)). Relevant here, 8 U.S.C. § 1252(g) meets the standard of “a clear statement of congressional intent to repeal habeas jurisdiction” over claims by aliens arising from the government’s decision or action to execute a removal order. *I.N.S. v. St. Cyr.*, 533 U.S. 289, 298 (2001).

1. Petitioner Cannot Overcome The Jurisdictional Bar To His Claims Found In 8 U.S.C. § 1252(G)

The jurisdiction stripping provision found in § 1252(g) is dispositive and fatal to Petitioner’s case. Under section 1252(g), “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to...execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (holding that § 1252(g) precluded judicial review of petitioners’ suit challenging Attorney General’s decision to commence proceedings). Here, ICE lawfully detained Petitioner to execute an order of removal because Petitioner is subject to an administratively and judicially final order of removal. Due to the finality of the removal order, this is not a case where § 1252(g) does not apply because Respondents “lacked the authority, and therefore the discretion, to remove” Petitioner. *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). There was no stay of Petitioner’s removal order. *Id.* Accordingly, § 1252(g) squarely covers Petitioner’s claim.

(i) Ninth Circuit Precedent Endorses Respondents’ Reading Of § 1252(G)

“No matter how [Petitioner] frames it, his challenge is to the Attorney General’s exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review.” *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022). Section 1252(g) is plainly applicable to the facts of this case. In

1 *Rauda*, as with the instant case, an alien with an administratively and judicially final order of removal
 2 sought to block his removal while he pursued a motion to reopen. *See id.* at 776; Dkt. No. 20 at 14; Dkt.
 3 No. 23 at 14. The Ninth Circuit held that, pursuant to § 1252(g), it lacked jurisdiction to review
 4 Petitioner’s claims: “The execution of his removal order is precisely what [Petitioner] challenges
 5 here...Congress has explicitly precluded our review of this claim.” *Id.* at 777.

6 Petitioner cannot escape the reach of § 1252(g) by alleging that his claims do not arise from the
 7 decision to execute his removal order, but instead only challenge his detention. *See* Dkt. No. 29 at 6. In
 8 this case, the two categories are not so distinct. A brief detention necessary to execute a removal order is
 9 “implicit in the concept of ‘removal’ itself.” *Diallo v. Joyce*, 817 F. Supp. 3d 202, 208 (S.D.N.Y. 2025).
 10 The government would be left powerless to execute a removal order – and § 1252(g) would become
 11 meaningless dead letter – if it cannot briefly detain an alien immediately prior to physically removing
 12 them from the United States. “Otherwise, § 1252(g) would be a paper tiger.” *E.F.L. v. Prim*, 986 F.3d
 13 959, 965 (7th Cir. 2021). This Court should “not render § 1252(g) so toothless.” *Id.*

14 The applicability of *Zadvydas v. Davis* does not turn on whether there is a detention; rather, what
 15 matters is the purpose and length of the detention. *See* Dkt. No. 29 at 6. The kind of detention that
 16 motivated the Supreme Court’s decision in *Zadvydas* was prolonged detention absent a significant
 17 likelihood of removal in the reasonably foreseeable future. 533 U.S. 678, 701 (2001). Here, no such
 18 worry is at play. Petitioner has a judicially final removal order to a country that regularly accepts
 19 deportees. His removal is thus eminently foreseeable, absent orders from this Court. His detention was
 20 not prolonged; he had been in detention for not yet a day when he filed his petition. Because Petitioner’s
 21 removal is imminent, *Zadvydas* is inapposite. *Diallo*, 817 F. Supp. 3d at 208 (“nothing in the Court’s
 22 holding says that the government may not remove Diallo or that, if removal were *imminent*, the
 23 government could not briefly detain Diallo for purposes of effecting that removal.”) (emphasis in
 24 original).

25 (ii) **Several Circuit Courts Agree With Respondents’ Reading Of**
 26 **§ 1252(G)**

27 The Ninth Circuit is not alone in adhering to § 1252(g)’s jurisdictional limit in cases involving
 28

the execution of final orders of removal. *See Rauda v. Jennings*, 55 F.4th at 778 (“We agree with our sister circuits...”). As the Eleventh Circuit put it, courts lack “jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order.” *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021). In reviewing § 1252(g), the Sixth Circuit held that, “[u]nder a plain reading of the text of the statute, the Attorney General’s enforcement of long-standing removal orders falls squarely under the Attorney General’s decision to execute removal orders and is not subject to judicial review.” *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) *cert. denied*, 141 S. Ct. 188 (2020). Petitioner’s twenty-year-old removal order surely would count as “long-standing.” In a case before the Third Circuit, the petitioner asked the district court to enjoin the execution of his removal order while he pursued the reopening of his removal proceedings, as Petitioner does, and his application for a provisional unlawful presence waiver. *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 295 (3d Cir. 2020). The Third Circuit rejected his claim as inconsistent with the plain text and design of § 1252(g). *Id.* at 297. The Third Circuit emphasized that “[a]ny other rule would gut § 1252(g). Future petitioners could restyle any challenge to the three actions listed in § 1252(g) as a challenge to the Executive’s general lack of authority to violate due process, equal protection, the Administrative Procedure Act, or some other federal law.” *Id.* at 298. Petitioner should not be permitted to do the same here.

Other courts have followed the Ninth, Eleventh, Sixth, and Third Circuits in relying on § 1252(g) as a bar to claims when an alien pressing a constitutional claim seeks to pause removal while he seeks other immigration relief, as Petitioner does here with his stated intention to file a motion to reopen. *See E.F.L. v. Prim*, 986 F.3d at 964-65; *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017); *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001); *Tsering v. U.S. Imm. & Customs Enf’t.*, 403 F. App’x. 339, 342-43 (10th Cir. 2010).

(iii) Numerous District Courts In The Ninth Circuit Also Agree With Respondents’ Reading Of § 1252(G)

Local district courts regularly rely on *Rauda* and § 1252(g) in dismissing aliens’ challenges to the execution of judicially final orders of removal. *See, e.g., Saelee v. Hernandez*, No. 2:26-CV-00735-

1 TL, 2026 WL 1045223, at *3 (W.D. Wash. Apr. 17, 2026) (relying on *Rauda* and 1252(g) to reject
2 petitioner's request for "procedural protections against inappropriate and unlawful detention.); *Toma-*
3 *Sambrano De Sandoval v. Semaia*, No. 5:26-CV-01644-MEMF-AS, 2026 WL 1073275, at *4 (C.D. Cal.
4 Apr. 17, 2026) ("In sum, because Section 1252(g) applies to Petitioner's claims, this Court does not have
5 jurisdiction to grant Petitioner's request to delay removal."); *Makuey v. Scott*, No. 2:26-CV-00632-DGE,
6 2026 WL 925647, at *5 (W.D. Wash. Apr. 6, 2026) (relying on *Rauda* in holding court lacked
7 jurisdiction consider petitioner's challenge to decision to execute removal order); *Kanyike v. U.S. Dep't*
8 *of Homeland Sec.*, No. 2:26-CV-02677-ODW (SSCX), 2026 WL 790554, at *1 (C.D. Cal. Mar. 16,
9 2026) ("[section] 1252(g) prohibits this Court from reviewing Kanyike's request to enjoin the execution
10 of his final removal order pending adjudication of the merits of his case."); *Vo v. Bd. of Immigr.*
11 *Appeals*, No. 26-CV-01801-BLF, 2026 WL 637033, at *3 (N.D. Cal. Mar. 6, 2026) ("The Ninth Circuit
12 has held unequivocally that § 1252(g) strips federal courts of jurisdiction to enjoin a noncitizen's
13 removal pending the BIA's adjudication of the noncitizen's motion to reopen."); *Saechao v. Scott*, No.
14 2:26-CV-00548-TMC, 2026 WL 626765, at *5 (W.D. Wash. Mar. 5, 2026) ("There is no meaningful
15 distinction between *Rauda* and Petitioner's request that execution of his removal order be stayed so that
16 he can file a motion to reopen."); *Hanna v. Santacruz*, No. 5:26-CV-00267-ODW (KSX), 2026 WL
17 242029, at *2 (C.D. Cal. Jan. 29, 2026) ("As framed, Petitioner's requested relief falls within § 1252(g)'s
18 jurisdictional bar because Petitioner asks the Court to restrain the government from executing a removal
19 order."); *Ramirez Ayala v. Santacruz*, No. 2:25-CV-11496-ODW (PVCX), 2025 WL 3485738, at *3
20 (C.D. Cal. Dec. 4, 2025) ("In sum, § 1252(g) applies to Petitioner's request to enjoin the execution of his
21 final removal order pending adjudication of the merits his case."); *Aguilar Garcia v. Kaiser*, No. 3:25-
22 CV-05070-JSC, Dkt. No. 33 (N.D. Cal. Oct. 30, 2025) (citing to *Rauda v. Jennings*, 55 F.4th at 778, in
23 denying petitioner's emergency motion for reconsideration); *Hernandez-Morales v. Bondi*, No. 25-CV-
24 2551-BJC-MMP, 2025 WL 2932650, at *3 (S.D. Cal. Oct. 15, 2025) ("In sum, Petitioner fails to
25 distinguish his challenge from the substantially similar challenge deemed barred in *Rauda*, and he fails
26 to demonstrate that his petition and TRO motion do not challenge the discretionary authority to execute
27 the removal orders."); *Poghosyan v. U.S. Dep't of Homeland Sec.*, No. 2:25-CV-03091-SB-ADS, 2025

1 WL 1287771, at *4 (C.D. Cal. May 1, 2025), *appeal dismissed sub nom. Poghosyan v. United States*
 2 *Dep't of Homeland Sec.*, No. 25-2835, 2025 WL 3079095 (9th Cir. Aug. 19, 2025) (relying on *Rauda*,
 3 *Tazu*, and *Camarena* to reject petitioner's challenge to the execution of his removal order); *see also*
 4 *Patel v. Garland*, No. 21-17024, 2024 WL 722575, at *2 (9th Cir. Feb. 22, 2024) ("The Patels seek to
 5 postpone removal Because the Patels challenge 'whether' and 'when,' *Rauda*, 55 F.4th at 777
 6 (emphasis omitted), a valid order of removal is executed, § 1252(g) bars our jurisdiction.").

7 Respondents thus respectfully request that this Court follow Ninth Circuit precedent and the
 8 decisions of numerous courts of appeals and district courts in holding that § 1252(g) bars Petitioner's
 9 claim.

10 **2. This Court Lacks Jurisdiction To Entertain Petitioner's Collateral Attacks** 11 **To Validity Of His Final Order Of Removal**

12 In all his filings, Petitioner has attacked the legal validity of the removal order due to a lack of
 13 notice. Petitioner's lack of notice of the removal order is a problem entirely of his own creation.
 14 Petitioner had the notice to appear read to him in his native language and that notice to appear included
 15 the time and location of his immigration court hearing. Petitioner was also informed of his obligations to
 16 provide the government with an up-to-date address. *See Urquia-Yanez v. Blanche*, No. 25-1136, 2026
 17 WL 1262677, at *5 (9th Cir. May 8, 2026) (dismissing petition for review challenging in absentia
 18 removal order for insufficient notice of requirement to update address where notice was given in
 19 English). Despite his affirmative duty under the law to provide the government with an address,
 20 Petitioner never provided an address to the government. After he was released from detention, Petitioner
 21 failed to appear at his court date and was appropriately ordered removed in absentia. Petitioner did not
 22 receive notice of the in absentia removal order because he had not provided an address at which to
 23 receive the removal order. Under the regulations, the government is not required to serve a removal
 24 order on an alien who has not provided an address. *See* 8 C.F.R. § 1003.37(b) ("A written copy of the
 25 [IJ] decision will not be sent to an alien who has failed to provide a written record of an address.").
 26 Refusing to comply with the laws requiring that an alien provide an address is not a trick to forever
 27 escape the consequences of violating the immigration laws of the United States.

28 Petitioner's claims regarding a lack of notice clearly fail on the merits. Nonetheless, this Court

1 lacks jurisdiction to even consider these claims. Under 8 U.S.C. § 1252(b)(9), federal district courts are
2 barred from reviewing any suit “arising from an[] action taken or proceeding brought to remove an
3 alien,” 8 U.S.C. §1252(b)(9). Instead, any review of the validity of a removal order are channeled
4 through a petition for review of a removal order with courts of appeals as the “sole and exclusive” forum
5 for such a claim. 8 U.S.C § 1252(a)(5). Thus, to the extent Petitioner’s claims are reviewable by a court,
6 it would be a court of appeals in a petition for review. 8 U.S.C. §§ 1252(a)(4), (a)(5), (b)(9). The Ninth
7 Circuit looked to these provisions and reached the same conclusion “The exclusive means to challenge
8 an order of removal is the petition for review process.” *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th
9 Cir. 2012).

10 This does not mean that no further legal remedies are available to Petitioner if he wishes to
11 challenge his removal order outside of this habeas action. Congress has provided aliens with the motion-
12 to-reopen process. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (“Aliens who are removed may
13 continue to pursue their petitions for review, and those who prevail can be afforded effective relief by
14 facilitation of their return.”). Petitioner has stated his intention to eventually file a motion to reopen.
15 That is the proper vehicle for his attacks on the removal order. This Court, however, cannot review that
16 removal order.

17 District courts under the Ninth Circuit agree with Respondents’ position. In *Pinedo-Rios v.*
18 *Bondi*, the court explained that:

19 Congress established procedures for a non-citizen seeking to rescind an in
20 absentia removal order, including procedures for judicial review—on a
21 petition for review to a federal Court of Appeals—of such an order.
22 Congress specifically divested district courts of habeas jurisdiction to
review orders of removal. 8 U.S.C. § 1252(a)(5); § 1252(b)(9). This Court
accordingly lacks jurisdiction to review the challenged order of removal.

23 No. 1:26-CV-01982-DJC-SCR, 2026 WL 1078249, at *3 (E.D. Cal. Apr. 21, 2026), *report and*
24 *recommendation adopted*, No. 1:26-CV-01982-DJC-SCR, 2026 WL 1189187 (E.D. Cal. Apr. 30, 2026);
25 *see also Medina Alvarado v. Warden of the Golden State Annex Detention Facility*, No. 1:26-CV-00112-
26 JLT-EPG (HC), 2026 WL 1113791, at *5 (E.D. Cal. Apr. 24, 2026) (“Seeing as Petitioner’s habeas
27 claim here is an indirect challenge to a removal order, the Court DENIES habeas relief on this ground as
28

well.”); *Ortega v. Warden of Golden State Annex ICE Det. Facility*, No. 1:25-CV-01856-DAD-CSK, 2026 WL 836323, at *2 (E.D. Cal. Mar. 26, 2026) (“Here, the relief petitioner seeks would necessarily require the court to find that the removal order issued in his case is invalid. This court lacks jurisdiction to enter that relief.”).

Accordingly, this Court lacks jurisdiction to judge the adequacy of the notice Petitioner received of the notice to appear or of the removal order. *See* Dkt. No. 29 at 8.

B. Petitioner’s Claim Also Fails On The Merits Because 8 U.S.C. § 1231 Authorizes His Detention

Petitioner is subject to a judicially and administratively final order of removal. As a result, his detention is governed by 8 U.S.C. § 1231.

1. Petitioner Is Subject To Mandatory Detention Under 8 U.S.C. § 1231(A)(1)(C)

Section 1231(a)(1)(C) provides that the mandatory detention period found in § 1231(a)(2)(A) “shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien...acts to prevent the alien’s 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 has an affirmative duty to provide the Attorney General with an address and must notify the Attorney General of each change of address within ten days. *See* 8 U.S.C. § 1229(a)(1)(F). 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).

For two decades, Petitioner committed a federal misdemeanor every time he changed addresses without notifying the Attorney General within ten days, and he did so with the direct and foreseeable consequence that the government would be hindered in locating him to execute the outstanding removal order. By violating the very statutory provisions Congress enacted to ensure the Government’s ability to

1 find him and remove, Petitioner did precisely what § 1231(a)(1)(C) describes: he acted to prevent his
2 removal. Thus, Petitioner's failure to comply with his statutory obligation to provide the government
3 with an address was an act that extends the removal period and renders him subject to detention under
4 U.S.C. § 1231(a)(1)(C). *See* 8 C.F.R. § 241.4(g)(1)(ii) (establishing that "The removal period shall be
5 extended until the alien demonstrates to the Service that he or she has complied with the statutory
6 obligations.").

7 *Gregorio Ordonez v. Bondi*, No. 2:25-CV-02356-JHC-TLF, 2025 WL 3852444 (W.D. Wash.
8 Dec. 19, 2025) is readily distinguishable. There, the in-absentia removal order was issued when the
9 petitioner was a child and the petitioner claimed he did not receive notice of the proceedings. *Id.* at *5;
10 *see also M.L.G.G. v. Wamsley*, No. 6:25-CV-02012-AA, 2025 WL 3539183 (D. Or. Dec. 10, 2025)
11 (same). Here, Petitioner was an adult when ordered removed and there is no doubt that Petitioner
12 received notice of the hearing at which he was ordered removed. The Notice to Appear with the date and
13 time of the hearing was served on him in person and read to him in his native language. Moreover,
14 Respondents are not arguing, as was argued in *Gregorio Ordonez*, that the failure to appear is what tolls
15 the removal period. *See, e.g., Guan Zhao Lin v. Holder*, No. 10 CIV. 4316, 2010 WL 2836144, at *5
16 (S.D.N.Y. July 2, 2010) ("Petitioner's failure to appear at [his] Immigration Court hearing [alone] does
17 not rise to the level of bad faith failure to cooperate necessary to trigger the tolling provision of section
18 1231(a)(1)(C)...*But that does not end the inquiry.*") (cleaned up and emphasis added); *see also* Dkt. No.
19 29 at 8.

20 Instead, it is Petitioner's failure to fulfill his affirmative duty under the law to provide the
21 government a current address that extends the mandatory detention period. *See Allen v. Holder*, No.
22 10CIV2512GBDJLC, 2010 WL 11643354, at *7 (S.D.N.Y. Dec. 9, 2010) (extending removal period
23 under § 1231(a)(1)(C) where petitioner "felt no need to register a change of address with immigration
24 officials"); *Guan Zhao Lin v. Holder*, 2010 WL 2836144, at *5 (Although the Petitioner's change in
25 residence is not dispositive of a "bad faith failure to cooperate,"...it supports an argument that
26 Petitioner's whereabouts at some point may have become unknown to the Government."); *Lin v.*
27 *Francis*, No. 25 CIV. 10001 (PAE), 2025 WL 3751855, at *4 (S.D.N.Y. Dec. 29, 2025)

(§ 1231(a)(1)(A) is “self-evidently addressed to noncitizens accessible to ICE. Lin, however, did not appear for his removal hearing. And on the record at hand, there is no basis to treat him as having been accessible to ICE, such that it could have removed him during the ensuing 90 days.”); *but see Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 502 (S.D.N.Y. 2009) (finding that petitioner was not subject to § 1231(a)(1)(C) because “At all times since her arrival in this country, Farez–Espinoza's address and whereabouts have been on file with DHS...”); *Ulysse v. Dep't of Homeland Sec.*, 291 F. Supp. 2d 1318 (M.D. Fla. 2003) (finding that petitioner was not subject to § 1231(a)(1)(C) because government had petitioner’s current address for four years); *Leslie v. Herron*, No. 10-CV-00515-AM, 2010 WL 4226561, at *4 (W.D.N.Y. Oct. 26, 2010) (“[W]here DHS has been aware of a petitioner's whereabouts and petitioner has not absconded or otherwise attempted to avoid enforcement of the removal order, the removal period is not extended under § 1231(a)(1)(C).”) Here, Petitioner’s repeated violations of §§ 1305 and 1306 are the sort of “affirmative and misleading act to thwart the removal process” necessary to extend the removal period. *Farez-Espinoza*, 600 F. Supp. 2d at 501.

2. Alternatively, Petitioner’s Detention Is Lawful Under 8 U.S.C. § 1231(A)(6)

Petitioner’s interpretation of § 1231(a)(6) is illogical and internally inconsistent. Petitioner claims that § 1231(a)(6) does not authorize a first-time detention after the ninety-day removal period has lapsed. Petitioner claims that § 1231(a)(6) *only* authorizes *continued* detention. But § 1231(a)(6) says nothing about “continued” detention. The plain text of the statute clearly authorizes the government to detain Petitioner “beyond” the removal period, which is to say after ninety days have passed.

Petitioner further claims that if Respondents are to detain Petitioner, they must comply with the requirements of 8 C.F.R. § 241.4. But those regulations, unlike § 1231(a)(6), are explicitly about the “continued detention” of aliens ordered removed. *See* 8 C.F.R. § 241.4 (*passim*). As both Petitioner and Respondents understand, there is no “continued detention” at issue in the instant case. The issue is a first-time detention after a removal order was issued. It thus makes no sense to require Respondents to comply with inapplicable regulations regarding “continued detention.” *See Lin v. Francis*, No. 25 Civ. 10001 (PAE), 2025 WL 3751855, at *3 (S.D.N.Y. Dec. 29, 2025) (reasoning that petitioner fails to “offer case law supporting the improbable proposition that—with his not having appeared at his removal

1 hearing or evidently had any contact in the ensuing 12 years with ICE—ICE was required either (1) to
 2 give him advance notice ... before detaining him, or (2) to release him on supervisory conditions after it
 3 encountered him”).

4 Petitioner’s insistence that Respondents must comply with 8 C.F.R. § 241.4 prior to detaining
 5 Petitioner also does not make sense given Petitioner’s argument that § 1231(a)(6) *only* authorizes
 6 continued detention. The implementing regulations found at 8 C.F.R. § 241.4 derive their authority from
 7 § 1231(a)(6), so presumably the regulations cannot permit what § 1231(a)(6) prohibits. Thus, the logical
 8 consequence of Petitioner’s argument that § 1231(a)(6) only authorizes “continued” detention is that
 9 Respondents are categorically prohibited from detaining Petitioner, regardless of whether they comply
 10 with 8 C.F.R. § 241.4. *See* Dkt. No. 29 at 9 (stating specifically that § 1231(a)(6) does not authorize
 11 Petitioner’s detention and generally that Respondents lack statutory authority to detain Petitioner).
 12 Petitioner does not otherwise identify an alternative detention authority. Even if the requirement to
 13 follow 8 C.F.R. § 241.4 for first time detentions flows from due process and not the statute, the question
 14 remains what statute *does* authorize the government to detain an alien for the first time after the passing
 15 of the removal period. Petitioner offers no answer to this question. Under his strained reading of § 1231,
 16 the government can never detain for the first time beyond the removal period. That absurd result cannot
 17 be the answer.

18 For the reasons just explained, the interpretation of § 1231(a)(6) in *Gregorio Ordonez*, 2025 WL
 19 3852444, at *7, is not persuasive. Numerous district courts also disagree with Petitioner’s view of §
 20 1231(a)(6). These courts have found that § 1231(a)(6) does authorize a first-time detention after the
 21 removal period has lapsed. For example, *Romero v. Noem*, No. 26-CV-01884 (MMG), 2026 WL
 22 775847, at *5 (S.D.N.Y. Mar. 19, 2026), the court found that:

23 Section 1231(a)(6)’s plain text provides the Government with discretionary
 24 authority to take inadmissible noncitizens into custody after the initial
 25 removal period expires, particularly in cases, like this one, where the
 noncitizen was not initially detained during the removal period because he
 absconded or otherwise failed to comply with the directives of immigration
 authorities.”).

26 Similarly, in *Piao v. Lyons*, No. 1:25-CV-1725, 2025 WL 3046783, at *2 (E.D. Va. Oct. 31, 2025), the
 27 court “conclude[d], as has other courts, that the government’s failure to detain the Petitioner during the
 28

removal period or immediately thereafter does not eliminate the Government's ability to detain Petitioner for the purpose of enforcing that removal order at this time.” These decisions were not aberrations but rather part of a lineage of decisions from courts across the country, in different districts, stretching back to at least 2007, all reaching the same conclusion. *See, e.g., Guevara v. LaRose*, No. 26-CV-00342-BAS-DDL, 2026 WL 412479, at *3 (S.D. Cal. Feb. 13, 2026) (holding lawful ICE’s first time detention of petitioner ordered removed in absentia twenty years prior); *Lin v. Francis*, No. 25 CIV. 10001 (PAE), 2025 WL 3751855, at *5 (S.D.N.Y. Dec. 29, 2025) (holding lawful ICE’s first time detention of petitioner after the 90-day removal period); *Lin v. United States*, No. CIV.A. 5:07-CV-26, 2007 WL 951618, at *3 (S.D. Tex. Mar. 28, 2007) (§ 1231(a)(6) authorized detention beginning years after removal order became final). Accordingly, § 1231(a)(6) authorizes Petitioner’s first time detention.

C. Petitioner Is Not Due Additional Process Because The *Mathews* Factors Favor Respondents

Respondents assume with conceding that the three-part test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), applies to the instant case. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022). The *Mathews* test balances 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”; and (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*, 424 U.S. at 335.

Petitioner lacks a liberty interest because he illegally entered the United States without admission. He has never held lawful status. Moreover, he has been ordered removed from the United States by an Immigration Judge and that order of removal is judicially final. He has remained in the country illegally for twenty years. His repeated and continuous violations of the immigration laws of United States do not earn him a constitutionally protected liberty interest.

There is no risk of erroneous deprivation. There is no question that Petitioner’s order of removal is judicially final. Petitioner’s removal is imminent, absent an order from this Court. Petitioner at most faces a short time in government custody before he is lawfully removed pursuant to the judicially final removal order. A brief detention is inherent in the government’s statutory and sovereign authority to

1 execute final orders of removal. Any time the government is enjoined by a court from effectuating
 2 statutes enacted by Congress, it suffers a form of irreparable harm. *See Maryland v. King*, 567 U.S.
 3 1301, 1303 (2012) (Roberts, C.J., in chambers). Petitioner, however, suffers no erroneous deprivation
 4 from the execution of the legally firm removal order against him. There is no constitutional injury from
 5 lawful removal. Additional safeguards are not necessary to prove what is already apparent: Petitioner is
 6 subject to a judicially final order of removal.

7 The government has a weighty interest in the prompt execution of removal orders. As the
 8 Supreme Court has emphasized, “[t]here is always a public interest in prompt execution of removal
 9 orders.” *Nken*, 556 U.S. at 436. However, the burden and delay to the government of holding a pre-
 10 deprivation hearing is significant. At the San Francisco Immigration Court, there are delays of several
 11 months in scheduling and holding a pre-deprivation hearing, and that does not include the additional
 12 time waiting a final decision from the immigration court. *See Guillermo M.R. v. Kaiser*, 3:25-cv-5436-
 13 RFL, Dkt. No. 39 (N.D. Cal. Jun. 29, 2025) (“[O]n August 12, 2025, the Immigration Court granted the
 14 motion of Respondent Department of Homeland...to schedule a pre-deprivation bond hearing for
 15 Petitioner. The hearing was scheduled for January 20, 2026.”). The removal of aliens lawfully ordered
 16 removed is a core sovereign function. The relief Petitioner seeks unjustifiability thwarts the prompt
 17 execution of the removal order against him.

18 **IV. CONCLUSION**

19 In light of the foregoing, Respondents request that the Court decline to convert the preliminary
 20 injunction into a final judgment, dissolve the preliminary injunction, dismiss the habeas petition.
 21

22 Dated: May 12, 2026

Respectfully submitted,
 CRAIG H. MISSAKIAN
 United States Attorney

24 /s/ William Skewes-Cox
 25 WILLIAM SKEWES-COX
 Special Assistant United States Attorney

26 *Attorneys for Respondents*
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