UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILTON MISAEL PEREZ Y PEREZ,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Case No. 25 Civ. 4828 (DEH)

RESPONDENTS' MEMORANDUM OF LAW IN RESPONSE TO ORDER TO SHOW CAUSE AND IN OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER

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The government[1] respectfully submits this memorandum of law in response to the order to show cause entered by the Court on June 9, 2025, ECF No. 3, and in opposition to the motion for a temporary restraining order—which seeks an order enjoining the government from transferring petitioner to a detention facility outside the Southern District of New York—contained in the petition for writ of habeas corpus filed by petitioner Milton Misael Perez y Perez ("Petitioner") on June 8, 2025. ECF No. 1.[2]

PRELIMINARY STATEMENT

Petitioner is a citizen of Guatemala who has been subject to a final removal order since 2020. In June 2024, Petitioner was arrested by local law enforcement on a criminal matter and released. In January 2025, Petitioner filed a motion to reopen his removal proceedings, which remains pending, but that motion does not stay his removal. Petitioner was detained following a check-in three days ago on June 7, 2025, and the next day, before ICE was aware of this petition and before this Court issued its order to show cause, ICE transferred Petitioner to an ICE facility in New Jersey because the lone ICE facility within this district was over capacity.

This Court should deny Petitioner's motion for a temporary restraining order because not only is the requested TRO moot in light of ICE's transfer of Petitioner outside of the district for reasons unrelated to this habeas action, but in any event, Petitioner cannot meet the stringent standard for such a temporary restraining order.

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[1] Although the docket reflects only one respondent, the petition names Donald J. Trump, Kristi Noem, Todd Lyons, Ken Genalo, the Department of Homeland Security, and Immigration and Customs Enforcement as respondents. Mr. Genalo is no longer the ICE Field Office Director in New York, and Acting Field Officer Director Judith Almodovar is automatically substituted in his place under Rule 25(d).

[2] The petition appears to have been refiled twice. ECF Nos. 2, 6.

BACKGROUND

Petitioner is a native and citizen of Guatemala who entered the United States on or about March 27, 2019. Declaration of Gilbert Beriso dated June 10, 2025 ("Beriso Decl."), ¶¶ 3, 4. Petitioner requested admission into the United States, but he admitted that he did not possess valid entry documents. *Id.* ¶ 4. Consequently, United States Customs and Border Protection ("CBP") placed Petitioner in custody that same day. *Id.* The next day, on March 28, 2019, CBP served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him with removability pursuant to INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), because he was "not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document." *Id.*

On May 13, 2019, Petitioner appeared *pro se* at his Immigration Court hearing. *Id.* ¶ 5. At the hearing, pleading were taken, and Petitioner admitted and conceded all allegations and his removability as charged. *Id.* The Immigration Judge found him removable to Guatemala. *Id.* Six months later, on or about November 14, 2019, Petitioner filed with the Immigration Court an I-589 application for asylum, withholding, and protection under the Convention Against Torture (CAT), with the assistance of prepare Lisa Knox. *Id.* ¶ 6.

On November 19, 2019, Petitioner appeared for a merits hearing on his application for asylum and withhold of removal. *Id.* ¶ 7. The Immigration Judge denied the application that same day and order Petitioner removed to Guatemala. *Id.* On November 22, 2019, Petitioner was released on Alternatives to Detention and instructed to report to 26 Federal Plaza. *Id.* ¶ 8.

Petitioner filed an appeal of the denial of his application for asylum and withholding of removal with the Board of Immigration Appeals ("BIA") on December 17, 2019. *Id.* ¶ 9. The BIA dismissed his appeal on September 22, 2020, rendering his removal order administratively

final. *Id.* On October 21, 2020, Petitioner filed a petition for review of his removal order with the Court of Appeals for the Ninth Circuit. *Id.* The case was administratively closed on March 30, 2022. *Id.* The court order stated: "the Clerk will close this court's docket for administrative purposes until further order of the court. This order is not a decision on the merits and has no impact on any stay of removal. No mandate will issue, and at any time any party may request that this immigration petition be reopened, or the court may reopen the petition sua sponte." *Id.* On February 3, 2025, Petitioner filed a motion to reopen his removal proceedings with the BIA. *Id.* ¶ 10.

On June 4, 2024, the New York City Police Department arrested Petitioner and charged him with Menacing in the 2nd Degree in violation of New York Penal Law § 120.14(1). *Id.* ¶ 11. The criminal case was pending at the Queens County Criminal Court under Case No. CR-019217-24QN. *Id.* Petitioner was released on his own recognizance. *Id.*

Petitioner was detained by ICE at a contractor office for ICE's Intensive Supervision Appearance Program on June 7, 2025. *Id.* ¶ 12. Petitioner was detained so that ICE may pursue travel documents and prepare to execute his administratively final removal order, barring subsequent legal impediment. *Id.* He was transported to ICE's Enforcement and Removal Operations processing area at 26 Federal Plaza, New York, New York. *Id.* At the time he was being processed, Orange County Jail in Goshen, New York, ICE's only detention facility in the Southern District of New York, was overcapacity for individuals with Petitioner's risk classification and could not accommodate him. *Id.* ¶ 13.

On June 8, 2025, Petitioner was temporarily detained at the holding facility in 26 Federal Plaza when he filed his petition for writ of habeas corpus. *Id.* ¶ 14. ICE was not served with the

petition at that time. *Id.* Before ICE was aware of his petition, at 9:30 p.m. on June 8, 2025, ICE transferred Petitioner temporarily to Delaney Hall in Newark, New Jersey, pending a flight to available long-term accommodations at another ICE detention facility. *Id.*

After becoming aware of this lawsuit, ICE's Enforcement and Removal Operations' New York City Field Office requested long-term bedspace from Enforcement and Removal Operations' Newark Field Office to keep Petitioner in the vicinity, but the request was denied because Delaney Hall is also at capacity. *Id.* ¶ 15. Petitioner is scheduled to be transferred to another ICE detention facility in Seattle, Washington with available accommodations as soon as practicable. *Id.* ¶ 16. In order to keep Petitioner either at Orange County Jail or at Delaney Hall, both of which are at or over capacity for his risk classification, ICE would necessarily need to transfer another detainee from the respective facility in order to accommodate Petitioner. *Id.* ¶ 17.

In his petition, Petitioner raises three claims. First, Petitioner asserts that his "prolonged detention" since June 7, 2025 "violates due process." Pet. ¶ 19. Second, Petitioner claims that he cannot be detained "where removal is not imminent due to the pending BIA motion" to reopen." *Id.* ¶ 20. Finally, Petitioner alleges that transfer or detention would obstruct his access to legal resources and interfere with his ability to pursue relief. Petitioner seeks release from custody or, in the alternative, a bond or custody redetermination hearing, along with an order enjoining ICE from transferring Petitioner from the Southern District of New York while his habeas petition is pending. *Id.* at 4 (Prayer for Relief).

On June 9, 2025, the Court issued an order directing the government to "show cause why the Temporary Restraining Order prohibiting Petitioner from being transferred from the Southern

District of New York should not be granted" by June 10, 2025, at 5:00 p.m. ECF No. 3. Petitioner was to serve the United States Attorney for the Southern District of New York by 9:00 a.m. on June 10, 2025. *Id.* This Office was served with the Court's order at approximately 8:40 a.m. this morning, and counsel for Petitioner provided a copy of the habeas petition, at approximately 10:26 a.m.

ARGUMENT

The Court should deny the motion for a temporary restraining order prohibiting transfer from the Southern District of New York because it is moot. Prior to the issuance of the Court's order to show cause, ICE had already transferred Petitioner to Delaney Hall in Newark, New Jersey—a detention facility outside of the Southern District of New York—because of a lack of available bed space within the Southern District of New York. Moreover, detaining Petitioner in this district would necessarily require ICE to transfer a different detainee to an ICE facility outside of this district.

More fundamentally, Petitioner cannot meet the stringent standard for a temporary restraining order keeping him in this district. Because his habeas petition was properly filed while he was detained in this district, his subsequent transfer to an ICE facility with available bed space outside of this district does not deprive this Court of jurisdiction; consequently, Petitioner cannot show irreparable harm, and a TRO is neither warranted nor necessary to preserve this Court's jurisdiction.

I. THE MOTION FOR A TRO PROHIBITING TRANSFER FROM THIS DISTRICT IS MOOT

In this case, although Petitioner was temporarily detained within this judicial district at the time of filing, due to a lack of available bed space within the Southern District of New York,

he was transferred to a facility in New Jersey on the evening of June 8, 2025, prior to this Court's June 9, 2025, order. Thus, the motion for a TRO prohibiting transfer from this district is moot, as the transfer has already occurred for operational reasons, namely a lack of bed space within the district, and a prospective order prohibiting transfer out of the district would not accomplish anything. *See In re Kurtzman*, 194 F.3d 54, 58 (2d Cir. 1999) (mootness occurs when court cannot grant any effectual relief to a prevailing party).

Additionally, the requested TRO barring transfer is not necessary to preserve the Court's jurisdiction. Petitioner's challenge to his detention is a "core" habeas matter that must be filed in the district of confinement and name the immediate custodian as respondent. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005–06 (Apr. 7, 2025); *Khalil v. Joyce*, __ F. Supp. 3d ___, 2025 WL 849803, at *5 (S.D.N.Y. March 19, 2025). At the time Petitioner filed his petition for writ of habeas corpus, he was detained within the Southern District of New York, albeit temporarily.[3] Consequently, habeas jurisdiction properly vested in this Court, and Petitioner's subsequent transfer out of the district does not deprive this Court of jurisdiction. *See Khalil*, 2025 WL 849803 at *5 (citing *Ex Parte Endo*, 323 U.S. 283 (1944)). To the extent Petitioner raises any viable claims concerning his detention[4] — and the government submits that he does not after only three days in detention — the Court can rule on them without his presence in the district.[5]

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[3] Petitioner was not booked into a detention facility and instead was being held in ICE's temporary holding room in 26 Federal Plaza while bed space arrangements were being made.

[4] The government does not understand Petitioner to be seeking a stay of removal in this action, but even were he to do so, this Court would lack jurisdiction to stay removal, and the government is prepared to brief the issue should it arise. *See* 8 U.S.C. §§ 1252(a)(5) ("a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal"), (b)(9) (so-called zipper clause channeling judicial review of all claims arising from removal proceedings to the courts of

Moreover, even if Petitioner had not already been transferred to a neighboring district, enjoining his transfer would not be appropriate in light of the lack of available bedspace in this district. ICE would necessarily have to transfer a different detainee currently housed at the Orange County Jail (ICE's only detention facility in this district) to a detention facility in a different district in order to make room for Petitioner, merely shifting the transferee status to another similarly situated individual, without any attendant effect on this Court's jurisdiction.

II. PETITIONER CANNOT MEET THE DEMANDING STANDARD FOR A TRO PROHIBITING TRANSFER OUTSIDE OF THIS DISTRICT

Petitioner cannot meet the stringent standard for a TRO prohibiting his transfer outside of this district, both because he is unlikely to succeed on the merits of his claim, and because the balance of harms does not weigh in his favor.

The standard for an entry of a TRO is essentially the same as for a preliminary injunction. *Andino v. Fischer*, 555 F. Supp. 2d 418, 419 (S.D.N.Y. 2008). Indeed, "a TRO, perhaps even more so than 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.'" *Free Country Ltd. v. Drennen*, 235 F. Supp. 3d 559, 565 (S.D.N.Y. 2016) (quoting *JBR, Inc. v. Keurig Green Mountain, Inc.*, 618 F. App'x 31, 33 (2d Cir. 2015)).

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appeals), (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 . . . [to] execute removal orders against any alien").

[5] Nor does the Second Circuit's decision in *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), compel a contrary result. There, the basis for transfer back to the district in which the petition was pending was on account of "an expeditious schedule for a bail hearing and to resolve the constitutional claims made in the habeas petition" along with "Öztürk's interest in participating in her scheduled habeas proceedings in person." *Id.* at 387–88. By contrast, Petitioner's case here does not require his presence at this time, among other reasons.

A party seeking a TRO, like one seeking a preliminary injunction, must typically show four elements: (1) a likelihood of success on the ultimate merits of the lawsuit; (2) a likelihood that the moving party will suffer irreparable harm if a TRO is not granted; (3) that the balance of hardships tips in the moving party's favor; and (4) that the public interest is not disserved by the relief granted. *JBR, Inc.*, 618 F. App'x at 33 (citing *Salinger v. Colting*, 607 F.3d 68, 79–80 (2d Cir. 2010)). A TRO, like a preliminary injunction, is "never awarded as of right," *Winter v. NRDC*, 555 U.S. 7, 24 (2008), and whether to grant such relief "rests in the sound discretion of the district court," *JSG Trading Corp. v. Tray–Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir. 1990).

First, Petitioner cannot show a likelihood of success on the ultimate merits of the lawsuit. His petition raises claims of "prolonged detention" and claims his detention is improper because "removal is not imminent," but neither claim passes muster. Petitioner was detained just three days ago — hardly a prolonged period of detention. Petitioner is subject to an administratively final order of removal and has not received (or apparently, even sought) a stay of removal from either the BIA or the Ninth Circuit. His detention is statutorily authorized by 8 U.S.C. § 1231(a) so that the government may seek to execute his removal order. Nor does Petitioner's pending motion to reopen provide a basis for release from detention, as the mere pendency of a motion to reopen before the BIA does not stay removal, 8 C.F.R. § 1003.2(f), and the Ninth Circuit expressly stated that its administrative closure "has no impact on any stay of removal." And motions to reopen may be pursued even from outside of the United States. *See Luna v. Holder*, 637 F.3d 85, 100 (2d Cir. 2011) (noncitizens abroad may pursue motions to reopen); *Barros Anguisaca v. Decker*, 393 F. Supp. 3d 344, 351 (S.D.N.Y. 2019) (similarly recognizing that,

"[u]nder normal circumstances, removal does not bar a petitioner from filing a post-removal motion to reopen removal proceedings from outside the United States").

Second, Petitioner here has not made any claim of irreparable harm from his detention. *See* ECF No. 6 (no mention of "irreparable harm"). "The showing of irreparable harm is perhaps the single most important prerequisite for the issuance of a preliminary injunction." *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (internal quotation marks and citations omitted). A movant can establish irreparable harm if she shows that "there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." *Id.* (internal quotation marks and citations omitted). Moreover, the irreparable harm alleged must be shown to be "actual and imminent, not remote or speculative." *Kamerling*, 295 F.3d at 214. The "mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction." *Borey v. Nat'l Union Fire Ins. Co.*, 934 F.2d 30, 34 (2d Cir. 1991). Where, as here, Petitioner does not make any assertion of irreparable harm, the motion for TRO must be denied.

Third, the balance of harms does not weigh in Petitioner's favor; in fact, the public interest would be disserved by relief here because it would require ICE to, in turn, transfer a different detainee out of this district in order to make room for Petitioner. *See* Beriso Decl. ¶ 17. Although Petitioner asserts that his detention would obstruct his access to legal sources and interfere with his ability to pursue relief, he has made no showing beyond his own say-so. On the contrary, Petitioner has already submitted his motion to reopen to the BIA, which he does not allege requires further involvement from him before the BIA rules, and he is represented by counsel in this matter as well. Moreover, he has made no specific allegation — let alone a

showing — that he will be unable to effectively consult with his counsel (based in Queens) if he is held outside of the district, as opposed to the one ICE facility in this district, the Orange County Jail located in Goshen, New York.

Accordingly, Petitioner fails to meet the stringent standard for a temporary restraining order, and this Court should deny the motion for a TRO prohibiting his transfer out of the district, which ICE had already done prior to knowledge of, and independent of, this petition due to bedspace limitations within this district.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for temporary restraining order prohibiting Petitioner from being transferred from the Southern District of New York.

Dated: New York, New York
June 10, 2025

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 2,756 words.