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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HAO DAY THAI, Petitioner v. SERGIO ALBARRAN, et al., Respondents.	No. 4:25-cv-6293-JST **RESPONDENTS' RESPONSE TO HABEAS PETITION**

I. INTRODUCTION

Petitioner is a citizen and national of Vietnam. He is a convicted murderer and has another conviction for attempted murder. *See* ECF No. 1 at 2 n.2. Due to this serious criminal history, Petitioner has been ordered removed to Vietnam. *Id.* ¶ 30. Immigration and Customs Enforcement ("ICE") has previously released Petitioner from custody under an order of supervision. *Id.* ¶ 31. He is subject to periodic check-in appointments with ICE while he awaits removal. *Id.* ¶ 8, 24.

This Court lacks jurisdiction to entertain Petitioner's habeas petition, much less the temporary restraining order ("TRO") that is currently before the Court. Petitioner is not in custody and has not been told that ICE intends to detain him at his next check-in. Yet he now asks this Court to provide him the extraordinary relief of a TRO to prevent his speculative *future* detention. This relief exceeds the permissible scope of habeas relief and should be denied.

The Court also lacks jurisdiction to enjoin Petitioner's removal to a third country because ICE has not stated its intention to remove Petitioner to a third country.

II. ARGUMENT

A. Legal Standard

A TRO 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). In general, the showing required for a TRO is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). 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); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). Petitioner must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three Winter elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citations omitted).

B. Habeas Relief Is Both Inappropriate and Premature Because Petitioner Is Challenging His Speculative Future Detention.

Habeas relief is an appropriate request when an individual "in custody" and requesting release from that custody. U.S. Const. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) ("The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody "); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody."). An individual does not need to be in actual physical custody to seek habeas relief; the "in custody" requirement may be satisfied where an individual's release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted "custody" for habeas purposes).

Here, Petitioner does not meet the "in custody" requirement despite being released on an order of supervision and subject to certain conditions of release. *See* ECF No. 1 ¶ 6. His habeas petition does not purport to challenge that custodial arrangement, i.e. the order of supervision and its terms, or secure his release from any present "custody." Petitioner is not in physical custody and is not challenging the terms of his order of supervision. Instead, Petitioner seeks an injunction to prevent his hypothetical future arrest and the possibility of future detention. The habeas relief that he seeks is not connected to the immigration custody on which he bases his petition. *See J.P. v. Santacruz,* No. 25-cv-1640, 2025 WL 2633198 (C.D. Cal. Aug. 27, 2020). In *J.P.*, the court held that even assuming ICE's order of supervision satisfied the "in custody" requirement, "Petitioner fails to adequately demonstrate he is challenging his confinement." *Id.* at *3. The court specifically noted that challenges to *future* detention did not fall within habeas jurisdiction:

> Here, Petitioner does not challenge the lawfulness of his alleged custody…Rather, Petitioner challenges his *potential* confinement absent a pre-deprivation hearing before a neutral adjudicator…Petitioner's concern about re-detention stems from Respondents indication that they *may possibly* re-detain Petitioner at a future in-person appointment that the ISAP scheduled…Based on the record in this case, the court would not find that Petitioner adequately demonstrates a challenge to his custody.

Id. (citing *Pinson v. Carvajal*, 69 F.4th 1059, 1073 (9th Cir. 2023) ("Because this claim neither goes to

the fact of Sands's confinement nor would require immediate release if successful, it is outside the core of habeas" and must be dismissed.) (emphasis added); *see also Doe v. Garland,* 109 F.4th 1188, 1194 (9th Cir. 2024) ("*Pinson* solidified the rule that a habeas claim is one challenging *the fact of confinement*, rather than the conditions of confinement.") (emphasis added). As in *J.P.*, Petitioner's claim here similarly challenges his hypothetical future confinement, not his present "custody" or confinement. Thus, Petitioner does not seek a remedy that sounds in habeas, and habeas jurisdiction is therefore inappropriate.

Petitioner does not know whether he will be detained at his next check-in. He has filed this petition not because he knows that he will be detained but because he speculates that ICE might detain him at his next check-in. *See* ECF No. ¶ 7. This does not provide the basis for the extraordinary remedy of a temporary restraining order. Petitioner is seeking an insurance policy from the Court to guarantee that he will not be detained. That is not the purpose of a habeas petition, and it is not the purpose of a TRO.

Thousands of individuals are subject to orders of supervision and are required to report to ICE on a periodic basis as part of those orders. If each such individual were entitled to bring a habeas petition in advance of every such appointment and secure a TRO to prevent ICE from undertaking hypothetical future actions, this would expand the Court's habeas jurisdiction into virtually unlimited territory, and impose unreasonable burdens on both the Court and Respondents. The implicit requirement that ICE must in all instances inform individuals in advance of their check-in appointments what will transpire at those appointments, on penalty of being enjoined from undertaking hypothetical future enforcement actions, is unwarranted, and would unduly interfere with ICE's enforcement mission. The sheer volume of check-ins every day, combined with the potential risk to officer safety, risk of flight of certain individuals, and need to maintain enforcement discretion and secrecy in some instances, makes any advance disclosure requirement both unreasonable and potentially dangerous.

In sum, this petition is premature. If Petitioner is in fact detained at his next appointment and he believes that the detention is unwarranted, he can file a habeas petition and TRO motion at that time. But the Court should not be in the business of guaranteeing to every individual who is subject to an order of supervision and is required to appear at periodic check-in appointments with ICE that they will not be

detained at any particular future check-in.

C. This Court Lacks Jurisdiction Over Petitioner's Third Country Removal Claim.

This Court lacks jurisdiction to address Petitioner's claim that he must be provided with notice and an adequate opportunity to apply for fear-based relief prior to any third country removal. *See* ECF No. 1 ¶ 14, 37, 78. The Constitution limits federal judicial power to designated "cases" and "controversies." U.S. Const., Art. III, § 2; *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a "case" or "controversy" within the meaning of Article III). "Absent a real and immediate threat of future injury there can be no case or controversy, and thus no Article III standing for a party seeking injunctive relief." *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlow Env't Servs., Inc.*, 528 U.S. 167, 190 (2000) ("[I]n a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury if certainly impending."). At the "irreducible constitutional minimum," standing requires that a plaintiff demonstrate the following: (1) an injury in fact (2) that is fairly traceable to the challenged action of the United States and (3) likely to be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Here, Respondents have not indicated that they seek to remove Petitioner to a third country. Accordingly, there is no controversy concerning third country resettlement for the Court to resolve. Federal courts do not have jurisdiction "to give opinion upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). "A claim is moot if it has lost its character as a present, live controversy." *Rosemere Neighborhood Ass'n v. U.S. Env't Prot. Agency*, 581 F.3d 1169, 1172-73 (9th Cir. 2009). The Court therefore lacks jurisdiction over Petitioner's claims concerning third-country resettlement because there is no live case or controversy. *See Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

Moreover, to the extent Petitioner's requested relief arises from—or seeks to enjoin—the decision to execute his removal order, it is jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack

jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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 commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed).

Here, Petitioner has a final order of removal, and if Respondents intended to remove Petitioner to a third country, they would be executing the final order of removal. Petitioner's claims therefore necessarily arise "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see* 8 U.S.C. § 1252(f)(2) ("Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law."). Accordingly, to the extent Petitioner's claims arise from, or seek to enjoin, the decision to execute his removal order, the Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C. § 1252(g).

III. CONCLUSION

In light of the foregoing, the Court should deny Petitioner's request for a temporary restraining order and for injunctive relief, and dismiss his habeas petition.

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Respectfully submitted,

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