BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK (Cal. Bar No. 204496)
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2574
E-mail: Daniel.Beck@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

J.P.,

Petitioner-Plaintiff,

v.

Ernesto SANTACRUZ JR., Acting Field Office Director of Los Angeles Office of Detention and Removal, U.S. Immigration and Customs Enforcement, et al.,

Defendants.Respondents.

No. 8:25-cv-01640-FWS-JC

RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION TOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION [DKT. 2]

[Redacted Declaration of Brenden J. Robbins filed concurrently herewith]

RESPONDENTS' OPPOSITION TO *EX PARTE* TRO APPLICATION

Respondents hereby oppose Petitioner's *ex parte* TRO Application [Dkt. 2].

I. INTRODUCTION

At the outset, Petitioner's voluminous *ex parte* TRO Application violates Local Rule 11-6.1. Petitioner filed a 41-page memorandum of points and authorities [Dkt. 2] with no attempt at including the certificate of compliance required by L.R. 11-6.2.[1] It has become common in this District to make such *ex parte* filings with minimal notice and with such voluminous amounts of argument and evidence that the government cannot fairly respond to them, nor take steps to resolve the dispute. Here, Petitioner submits what appears to be years of argument, documents, and citations, presumably lifted and copied from his prior legal proceedings. For this threshold procedural reason of violating the Local Rules, the *ex parte* TRO Application should be denied.

Turning to the merits, the *ex parte* TRO Application concedes Petitioner's long and serious criminal history—including felony manslaughter with aggravation for use of a firearm—but essentially contends that because Petitioner was previously released on bond by an Immigration Judge, he is entitled to a relatively elaborate set of procedural restrictions for any immigration detention. Specifically, he requests an order granting him a hearing before a "neutral decisionmaker" to determine first whether there has been a material change in circumstances, and second, whether the government can show by clear and convincing evidence that detention would now be warranted on the basis that he is a danger or a flight risk. [Dkt 2-2] (Proposed Order).

As to why he merits this, Petitioner contends he may soon be detained because he was arrested by City of Tustin police officers on July 19, 2025. *See* J.P. Decl., ¶¶ 44-46. He contends he was pulled over for having "tinted windows." *Id.* Petitioner vaguely

---

[1] Petitioners' counsel sent an email to the USAO Civil Division Chief at 10:34 p.m. on July 26, 2025, and filed the *ex parte* application at 3:15 p.m. on Sunday, July 27. Copies were sent to Respondents' counsel at 6:24 p.m.

suggests that this stop was pretext for something, but he does not explain what that is, nor how tinted windows would trigger it. Petitioner contends he tried to "respectfully ask questions and record my interaction with them, but that seemed to make the officers mad," and that they thereupon reached into the truck, dragged him out, and several officers "jumped on me." *Id.* Petitioner complained of pain in his back and legs, whereupon he was taken to the Emergency Room in Santa Ana and given CT scans. *Id.* Presumably those CT scans were negative, as Petitioner was then taken to Orange County Jail, and ultimately released at 10:00 a.m. in the morning. He contends that no charges have yet been filed against him. *Id.*

But Petitioner's criminal records indicate that the Tustin Police arrested him for violating California Penal Code 148(a)(1)—a misdemeanor for resisting, delaying, or obstructing arrest—along with an infraction for possessing marijuana while driving in violation of California Vehicle Code § 42103. *See* Declaration of Brenden J. Robbins, ¶ 20. Petitioner's *ex parte* TRO Application fails to ever mention this.

At bottom, the Court should deny Petitioner's *ex parte* TRO Application for multiple reasons besides the procedural defects. First, this Court lacks jurisdiction. Petitioner's claim is not a cognizable habeas claim, as it seeks to enjoin his arrest and/or require a pre-detention hearing, not a release from custody. Additionally, 8 U.S.C. § 1252(g) strips federal courts of jurisdiction over "any cause or claim" arising from the execution of removal orders, which Petitioner's claims plainly do.

Petitioner also has not shown a likelihood of success on the merits of his claims. Petitioner has a final removal order. Petitioner has no due process right to further procedures, including a pre-detention hearing, regarding his removal. His detention is statutorily authorized by 8 U.S.C. § 1231(a)(6) to execute his removal from the United States. He will receive sufficient process during any such detention via the Post Order Custody Regulations in 8 C.F.R. § 241.4, which set forth specific criteria that should be weighed in considering whether to recommend further detention beyond the removal

period set in 8 U.S.C. § 1231. There is no basis to conclude that Petitioner is entitled to any additional process during or before any hypothetical detention to execute his valid, final order of removal. Therefore, this Court should deny his Petition.

II. STANDARD OF REVIEW

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain injunctive relief, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. Because Petitioner seeks a mandatory injunction here, the already high standard is "doubly demanding." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Thus, Petitioner must establish that the law and facts *clearly favor* his position, not simply that he is likely to succeed. *Id.* Further, a mandatory preliminary injunction will not issue unless extreme or very serious damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

III. ARGUMENT

A. Petitioner's Claim Is Not a Cognizable Habeas Petition Because It Does Not Seek Release from Custody

Habeas relief is an appropriate request when an individual is detained and requesting release from that detention. 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). But Petitioner does not challenge his current custody. Even if Petitioner were to meet the "in custody" requirement because he is subject to certain conditions of release—such as reporting annually to an ICE office—this habeas petition does not purport to challenge that custodial arrangement or secure his release from any *present* "custody." Accordingly, habeas jurisdiction is inappropriate.

B. Petitioner's Claims Run Afoul of the INA's Jurisdiction Stripping Provisions

Petitioner is currently subject to a final removal order; he is not merely in removal proceedings. To the extent he contests the decision to enforce it via arrest, that runs afoul of 8 U.S.C. § 1252(g), where Congress provided that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999).

Here, Petitioner's claims arise from his concerns about the execution of his removal order, which is barred by Section 1252(g). Indeed, his petition seeks to require ICE to provide him with additional procedures not authorized by statute or regulation prior to his removal or even any arrest to effectuate his removal.

Furthermore, Sections 1252(a)(5) and 1252(b)(9) of the INA also bar review in this Court. By law, "the sole and exclusive means for judicial review of an order of

removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute explicitly excludes review via "section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. *Id.* (emphasis added).

Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all" claims arising from deportation proceedings to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. Under Ninth Circuit law, "[t]aken together, §[§] 1252(a)(5) and [(b)(9)] mean that any issue— whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and- practices challenges, through the PFR process whenever they 'arise from' removal proceedings").

Insofar as Petitioner seeks to effectively block his arrest and removal, his claims are precluded by these jurisdiction stripping provisions.

C. The Supreme Court has rejected the argument that Due Process Requires a Pre-Deprivation Hearing for Noncitizens Subject to Mandatory Detention under 8 U.S.C. § 1226(c).

As noted above, Petitioner was convicted for multiple felony offenses, including participating in a criminal street gang, voluntary manslaughter, and using a firearm in the commission of a felony. *See* Robbins Decl., ¶ 10. Petitioner is thus subject to mandatory detention pursuant to his final removal order, issued on August 18, 2023. *Id.*, ¶ 17.

Petitioner contends that due process prohibits his detention under § 1226(c) without a determination that he is a flight risk or danger. Yet the Supreme Court has rejected this argument. In *Demore v. Kim*, an alien "argued that his detention under § 1226(c) violated due process because legacy Immigration and Naturalization Service (INS) had made no determination that he posed either a danger to society or a flight risk." 538 U.S. 510, 514 (2003). The Supreme Court denied his claim, emphasizing that Congress's "broad power over naturalization and immigration" allows it to "regularly make[] rules that would be unacceptable if applied to citizens." *Id.* at 521. The Supreme Court acknowledged that the Fifth Amendment entitles noncitizens to due process, but affirmed, consistent with over a century of case law, that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Id.* at 523 (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). The Supreme Court ultimately concluded that detaining a noncitizen under § 1226(c) without an individualized determination of dangerousness or flight risk did not violate due process. *Id.* at 531.

Furthermore, beyond flight risk and danger, the Supreme Court has long recognized the government's interest in effecting the removal of aliens as a constitutional justification for detention. *See Demore*, 538 U.S. at 523; *see also Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (holding that the reasonableness of an alien's post-order detention should be measured "primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal"). The Supreme Court in *Demore* made clear that for removal proceedings, due process does not require the government "to employ the least burdensome means to accomplish its goal" of effecting the removal of noncitizens. *See Demore*, 538 U.S. at 528.

Accordingly, Petitioner has not shown that his arrest and detention pursuant to his final removal order would be inconsistent with law.

D. Petitioner Has Not Shown That Due Process Compels Providing a Special Hearing Prior To Detention for Any Reason While He Is Subject To A Final Removal Order

Petitioner makes a variety of arguments as to why he should not be subject to arrest and detention, most of which center on the Immigration Judge's decision to release him on bond *prior* to the issuance of a final removal order against him, at a time while his removal proceedings were still pending. His habeas petition was granted on August 7, 2023, and that grant required a bond hearing to be held for him. *See* Robbins Decl., ¶ 15. His final removal order was subsequently issued by the Immigration Judge on August 18, 2023, but he was granted a bond and ordered alternatives to detention that same day. *Id.* ¶¶ 15-18.

His prior detention was thus not pursuant to a final removal order. The cases Petitioner's Application cites primarily address *pre-removal order* detention, in which the primary consideration is ensuring an alien's presence at their future removal proceedings and where bond hearings are largely available by regulation. Here, Petitioner is subject to *post*-final order detention under Section 1231(a)(6). The purpose of that detention is to effectuate removal—not to ensure presence at pending removal proceedings, as might be the case with other statutes. Accordingly, the reasoning underlying the cited authority is distinguishable. *See, e.g. Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *1, 3 (N.D. Cal. Aug. 23, 2020) (discussing mandatory detention under 8 U.S.C. § 1226(c) pending BIA review of a removal decision, not detention to effectuate a removal order under § 1231(a)(6)); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1053 (N.D. Cal. 2021) (noting that the petitioner's detention was "governed by § 1226(a)," without mentioning § 1231(a)(6)).

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231.

Requiring a pre-detention hearing for individuals with final removal orders would impair law enforcement, including because it would increase the risk of flight. When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). After that time, a noncitizen may request release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Furthermore, when a valid removal order is issued, there is not a protected liberty interest in remaining free from detention by imposing a special process that prevents the government from electing to revoke a supervised release. The government is authorized to revoke such release pursuant to 8 CFR § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

Petitioner appears to conflate his time spent in detention *prior* to the issuance of a final removal order with his potential for future detention *pursuant to* the final removal order. They are not the same thing. Petitioner has not spent significant time in detention pursuant to his final removal order, issued at the same time he was ordered released on bond. He does not have a right to prevent his detention pursuant to the same process that applies to other noncitizens subject to detention pursuant to a final removal order.

E. Petitioner Has Not Shown He Will Suffer Irreparable Harm Absent a Mandatory Preliminary Injunction

Petitioner has also not demonstrated that he will suffer irreparable injury absent his release. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury. But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

F. The Balance of Interests Favors the Government

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement

of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). This public interest outweighs Petitioner's private interest here.

VI. CONCLUSION

For all the above reasons, the Respondents respectfully request that Petitioner's *Ex parte* TRO Application be denied.

Dated: July 28, 2025

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Daniel A. Beck
DANIEL A. BECK
Assistant United States Attorney

Attorneys for Respondents

CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondents, certifies that the memorandum of points and authorities contains 3,320 words, which complies with the word limit of L.R. 11-6.1.

Dated: July 28, 2025

/s/ *Daniel A. Beck*
DANIEL A. BECK
Assistant United States Attorney

Attorneys for Respondents