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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Artak Ovsepian, Alien #[redacted]

Petitioner,

v.

PAMELA BONDI, in her official capacity as Attorney General, et al.

Respondents.

No. 5:25-cv-01937-MEMF-DFM

RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER [DKT. 2]

Hon. Maame Ewusi-Mensah Frimpong
United States District Judge

RESPONDENTS' OPPTION TO *EX PARTE* TRO APPLICATION

I. INTRODUCTION

The Court should deny Petitioner's *ex parte* Application for a Temporary Restraining Order ("TRO Application"), Dkt. 2. First, as to Petitioner's request that the Court order him returned to this district, the Petitioner cannot meet the high burden to request a mandatory injunction. Second, Petitioner's request that he not be removed to a third country unlawfully or without notice and an opportunity to be heard should be denied as an improper attempt to enjoin the government to follow the law. Accordingly, this Court should deny the instant TRO Application because no emergency relief is warranted.

II. STANDARD OF REVIEW

The standard for issuing a TRO and a preliminary injunction are substantially identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A TRO is "an extraordinary and drastic remedy ... 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). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

III. ARGUMENT

A. Petitioner's Request for a Mandatory Injunction Requiring His Return to this District Should Be Denied

Petitioner first seeks a mandatory injunction that Petitioner be returned to this district from another district.[1] Dkt. 2 ("TRO App.") at 2. 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

[1] ICE indicates that Petitioner is presently en route to Louisiana.

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).

Petitioner cannot meet this demanding burden.

1. The law and facts do not clearly favor Petitioner because the relief sought is not part of his habeas claim

Petitioner argues that he is likely to succeed on the merits because he is stateless and because his continued detention is unconstitutional. Dkt. 2-1 ("TRO Motion") at 7. However, the TRO relief sought, to be detained solely in the Central District of California, is not a part of his habeas claim. There is no claim for "unlawful district of detention." Nor does Petitioner cite any authority establishing that detainees cannot be transferred to other districts. Furthermore, there is no prohibition on transferring alien detainees subject to removal; rather the INA bars this Court from entering injunctive relief with respect to transfers.

The government may detain aliens pending removal proceedings under 8 U.S.C. § 1226(a) and removable aliens under § 1231(a). And the government must detain aliens who are inadmissible or removable under certain provisions. *See id.* §§ 1226(c)(1), 1231(a)(2)(A). Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain aliens. The INA precludes review of "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General . . . ." 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain Petitioners. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction).

Second, § 1252(g) also bars enjoining transfers under Title 8. It prohibits district courts from hearing challenges to decisions and actions about whether, when, and where to commence removal proceedings. Reading the discretionary language in §§ 1231(g)(1)

and 1252(g) together confirms that Congress foreclosed piecemeal litigation over where a detainee may be placed into removal proceedings. *See Liu v. INS*, 293 F.3d 36, 41 (2d Cir. 2002) (habeas petition "must not be construed to be 'seeking review of any discretionary decision'" (*quoting Chmakov v. Blackman*, 266 F.3d 210, 215 (3d Cir. 2001))), superseded by statute on other grounds as recognized by *Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 113 (2d Cir. 2008); *see also Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002); *Tercero v. Holder*, 510 F. App'x 761, 766 (10th Cir. 2013) (Attorney General's discretionary decision to detain aliens is not reviewable by way of habeas.).

Accordingly, Congress has specifically barred judicial intervention with respect to the government's decision where to detain Petitioner. Hence, the government cannot be ordered to return Petitioner back to this district.

2. Petitioner cannot show extreme or very serious, irreparable harm

Petitioner has not demonstrated that he will suffer irreparable injury absent his return to this district. 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.

First, Petitioner fails to demonstrate irreparable harm since this Court continues to have jurisdiction to adjudicate his habeas petition. A writ of habeas corpus operates not upon the prisoner, but upon the prisoner's custodian. *See Braden v. 30th Jud. Circuit Ct.*

of Kentucky, 410 U.S. 484, 494–495 (1973). Jurisdiction over a § 2241 petition attaches when a petitioner files a petition in his district of confinement and names his custodian. *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change."). *See, e.g., Acosta v. Doerer*, No. 5:24-cv-01630-SPG-SSC, 2024 WL 4800878, at *4 (C.D. Cal. Oct. 24, 2024) (holding that the district court maintained jurisdiction even after immigration detainee petitioner was transferred from one federal facility to another); *Rincon-Corrales v. Noem*, No. 2:25-cv-00801-APG-DJA, 2025 WL 1342851, at *2 (D. Nev. May 8, 2025) ("[O]nce a petitioner has properly filed a habeas petition in the district of confinement, any subsequent transfer does not strip the filing district of habeas jurisdiction.").

Petitioner argues that being subjected to unlawful detention itself constitutes irreparable injury as does his continued detention without appropriate medical care. TRO Motion at 13. 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.

Petitioner fails to identify any specific irreparable harm that would arise from being detained in another district versus within this judicial district. He makes reference to interference with his access to counsel who is located in Los Angeles; however, Petitioner fails to demonstrate that he will not be able to access counsel while at another detention center.

B. Petitioner's Request for a Prospective Injunction Prohibiting Any Potential Transfer to a Third Country Should Be Denied

Petitioner's request for an injunction prohibiting Petitioner's transfer to a third country similarly fails. This request is speculative, Petitioner assumes with no evidence presented or factual support that he would be removed unlawfully to an undesignated third country and without notice and an opportunity to be heard. TRO Motion at 13-14. All that the Petitioner is requesting here is that the government follow the law when it comes to third country removals.

It is improper to prospectively enjoin the government to follow the law. *See Elend v. Basham*, 471 F.3d 1199, 1209 (11th Cir. 2006) (court cannot fashion an injunction that abstractly commands the Secret Service to obey the First Amendment, noting that injunction requiring party to do nothing more specific than 'obey the law' is impermissible."); *E.E.O.C. v. AutoZone, Inc.*, 707 F.3d 824, 841 (7th Cir. 2013) ("An obey-the-law injunction departs from the traditional equitable principle that injunctions should prohibit no more than the violation established in the litigation or similar conduct reasonably related to the violation."); *see, e.g. Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 767 (4th Cir. 1998) (an "obey the law" injunction "impermissibly subjects a defendant to contempt proceedings for conduct unlike and unrelated to the violation with which it was originally charged"); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1201 (11th Cir. 1999) ("As this injunction would do no more than instruct the City to 'obey the law,' we believe that it would not satisfy the specificity requirements of [Federal Rule of Civil Procedure] 65(d) and that it would be incapable of enforcement."); *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 144 (2d Cir. 2011) ("[A]n injunction [must] be 'more specific than a simple command that the defendant obey the law.'"). As the Supreme Court has explained,

> The specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a

> contempt citation on a decree too vague to be understood. Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.

Schmidt v. Lessard, 414 U.S. 473, 476 (1974) (cleaned up). Reiterating existing law as an injunction or TRO does not perform this function.

Petitioner asks this Court to order government to follow the law and not remove him to a country where "his life or freedom would be threatened because of five protected grounds," 8 U.S.C. § 1231(b)(3)(A), or where he would face a threat of torture, 8 C.F.R. §§ 208.16-208.18. TRO Motion at 10. Petitioner argues that because the procedures outlined in a March 2025 DHS memo violates statutory and regulatory provisions, if Respondents are detaining him with the intent to remove him to a third country without notice or opportunity to be heard, then the detention is unlawful. TRO Motion at 10-11. But this argument again assumes that Petitioner has suffered a constitutional injury and that he is being unlawfully detained. *See Cortez*, 2019 WL 1508458, at *3. Petitioner's argument further assumes that the government will act in an unlawful manner in the future and so the Petitioner will suffer a constitutional injury at some point in the future. This is too hypothetical to warrant the extraordinary relief of an injunction.

C. 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.

IV. CONCLUSION

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

Dated: July 30, 2025

Respectfully submitted,

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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 2,027 words, which complies with the word limit of L.R. 11-6.1.

Dated: July 30, 2025

/s/ *Soo-Young Shin*
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