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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICTOR AMADO RODRIGUEZ-FLORES,

Petitioner,

v.

F. SEMAIA, in his official capacity as Warden, Adelanto Detention Facility, et al.,

Respondents.

Case No. 2:25-cv-06900-JGB-JC

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION [DKT. 9]

[Declaration of Fernando Negrete filed concurrently]

Honorable Jesus G. Bernal
United States District Judge

I. INTRODUCTION

Petitioner's voluminous "Motion for Temporary Restraining Order"—technically not a motion, but rather an *ex parte* application—violates Local Rule 11-6.1. Petitioner filed a 27-page memorandum of points and authorities [Dkt. 9-1] with no attempt at including the certificate of compliance required by L.R. 11-6.2. In addition, Petitioner submits 69 pages of what appears to be years of disparate argument, documents, and citations presumably lifted and copied from his prior legal proceedings, which make it difficult for the United States to respond in a short period of time. For this threshold procedural reason, the TRO Motion should be denied.

The Court should also deny Petitioner's claims because they are barred by the jurisdiction-stripping provisions of the Immigration and Naturalization Act and for failure to demonstrate that Due Process compelled him to receive a special Immigration Court hearing before his detention, as opposed to the Immigration Court hearing that he received shortly thereafter—and that the only remedy for this would be his immediate release. Petitioner also has not shown a likelihood of success on the merits of his claims. Last, Petitioner is currently detained, and he has not shown that the extraordinary remedy of disrupting the status quo by a TRO is warranted.

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 that disrupts the status quo,

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. SUMMARY OF FACTS

Petitioner Victor Rodriguez-Flores is a native and citizen of Guatemala. *See* Fernando Negrete Decl. ¶ 4. On September 18, 2003, Petitioner attempted to enter the United States without inspection near Douglas, Arizona. *Id.* at ¶ 5. He was apprehended by immigration authorities, and he voluntarily returned to Guatemala. *Id.* On March 8, 2010, Petitioner was apprehended by immigration authorities near Tecate, California. *Id.* at ¶ 6. He was processed for expedited removal, and on April 12, 2020, he was removed to Guatemala. *Id.* at ¶ 7. On June 12, 2010, Petitioner was apprehended near Hidalgo, Texas. *Id.* He did not express a fear of returning to Guatemala. *Id.* Therefore, his prior removal order was reinstated, and he was once again removed to Guatemala. *Id.* at ¶ 7.

On October 24, 2019, Petitioner was taken into custody after being encountered in Murrieta, California. Negrete Decl. at ¶ 8. On November 6, 2019, Petitioner indicated he was afraid of returning to Guatemala. *Id.* at ¶ 9. Therefore, his case was forwarded to an asylum officer to conduct a reasonable fear interview as required pursuant to 8 C.F.R. § 1208.31. *Id.* After a positive reasonable fear determination, on November 27, 2019, Petitioner was issued and served with Form I-863, Notice of Referral to the Immigration Judge. *Id.* at ¶ 10.

On March 10, 2020, the immigration judge denied all of Petitioner's applications for relief and ordered him removed to Guatemala. *Id.* at ¶ 11.

On April 22, 2020, the immigration judge ("IJ") ordered Petitioner to be released on a $5,000 bond and left it to the agency's discretion whether to also place him on an alternative to detention program. *Id.* at ¶ 12. On April 22, 2020, Petitioner was released

from custody pursuant to the bond order, and he was also placed on an Order of Supervision, GPS ankle monitor, and enrolled in the Intensive Supervision Appearance Program as the alternative to detention. *Id.* at ¶ 13.

On December 2, 2020, the Board of Immigration Appeals ("BIA") dismissed Petitioner's appeal of the IJ's decision. *Id.* at ¶ 14. On December 29, 2020, Petitioner filed a motion to reconsider the prior BIA appeal dismissal. *Id.* at ¶ 15. On January 4, 2021, ERO received information that Petitioner had filed a petition for review in the Ninth Circuit Court. *Id.* at ¶ 16. ERO was also informed that in that petition for review Petitioner had requested a stay of removal. *Id.* On October 12, 2021, BIA vacated the prior order dismissing Petitioner's appeal and reinstated his appeal. *Id.* at ¶ 17. BIA also considered the brief that Petitioner submitted but once again dismissed Petitioner's appeal. *Id.*

On January 4, 2022, the Ninth Circuit issued a temporary stay of removal to continue until a mandate issued unless the court ordered otherwise. *Id.* at ¶ 18. On February 25, 2022, the Ninth Circuit issued an order administratively closing the docket and indicating that no mandate would issue during the time the case remained closed. *Id.* at ¶ 19.

On April 2, 2025, the Ninth Circuit ordered the docket reopened and ordered Petitioner's opening brief to be filed on June 10, 2025. *Id.* at ¶ 20. On June 7, 2025, Petitioner was served with a Notice of Intent/Decision to Reinstate Prior Order. *Id.* at ¶ 22. On July 3, 2025, Petitioner filed a motion for custody redetermination with the Adelanto Immigration Court. *Id.* at ¶ 23. A hearing was scheduled for July 11, 2025. *Id.* On July 11, 2025, the IJ denied bond. *Id.* at ¶ 24. Petitioner remains in custody at the Adelanto Detention Center. *Id.* at ¶ 25.

IV. ARGUMENT

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

Petitioner is currently subject to a final removal order issued by an Immigration

Judge, subject to his pending efforts to seek appellate review with the Ninth Circuit. *See* Negrete Declaration. To the extent he contests the decision to enforce that removal order, 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).

Furthermore, Sections 1252(a)(5) and 1252(b)(9) of the INA also bar review. 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) also separately channels "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 detention pursuant to a removal order, and to overrule the Immigration Court's determination that his current detention is proper, his claims are precluded by these jurisdiction stripping provisions.

B. There Is No Jurisdiction to Contest the IJ Bond Decisions

After he was recently detained pursuant to his final removal order, Petitioner received a hearing from an Immigration Judge, who denied his release on bond. *See* Petition, ¶¶ 22-25. 8 U.S.C. § 1226(e) provides that bond decisions "shall not be subject to judicial review" and that "[n]o court may set aside any action or decision . . . regarding the detention or release of any alien or the grant, revocation, or denial of bond[.]" As the Supreme Court has recognized, "§ 1226(e) precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (internal quotations, alterations, and citations omitted).

Similarly, because section 1226(e) commits bond determinations to agency discretion by statute, the Court also lacks jurisdiction pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii). *See Kucana v. Holder*, 558 U.S. 233, 241-52 (2009); *see also* Resp. 9-10. Thus, the relief Petitioner is requesting must be denied because the Court lacks jurisdiction to review his custody determination and bond orders under both section 1226(e) and section 1252(a)(2)(B)(ii).

C. Petitioner Has Not Shown That Due Process Compelled Providing Him a Special IJ Hearing Prior to Detention, And Petitioner Also Received an IJ Hearing Affirming His Current Detention.

Finally, Petitioner argues that he should not have been arrested because an IJ ordered him released on an OSUP previously back in 2020, and yet he was arrested and detained in 2025 without a neutral hearing before an IJ.

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. Here, to the extent Petitioner has obtained a temporary appellate stay of his final removal order due to his seeking appellate review, that is not indefinite.

Furthermore, when a valid removal order is issued and a non-citizen is released under an order of supervision, the government is authorized to revoke supervised release pursuant to 8 C.F.R. § 241.1(l)(1) and 8 C.F.R. § 241.4(l)(2) while Petitioner contends that there were not changed material circumstances prior to his re-detention, Petitioner's Ninth Circuit Appeal (which issued a temporary stay of the removal) was administratively closed from February 2022 onwards. On April 2, 2025, however, the Ninth Circuit ordered the docket reopened and ordered Petitioner's opening brief to be filed on June 10, 2025. *See* Negrete Decl., at ¶ 20. On June 7, 2025, Petitioner was served with a Notice of Intent/Decision to Reinstate Prior Order. *Id.* at ¶ 22. This is a significantly changed circumstance.

Perhaps most importantly, however, Petitioner *received* an IJ bond decision affirming his current continuing detention pursuant to his final removal order. Petitioner seeks release from detention as his current remedy, and he is currently detained. He has asserted his right to remain out on conditional release, free of detention, as a liberty interest to be considered before a neutral decision maker. While it is true that he received that IJ hearing after he was detained, the issues he complains of were presented before the Immigration Judge. His arguments on such points were already considered by the

Immigration Judge who denied his custody redetermination. Relative to his claim for release from current detention, due process is provided by that IJ procedure.

D. 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. Here, Petitioner has not shown extraordinary circumstances warranting a mandatory preliminary injunction.

E. 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.

V. CONCLUSION

Respondents respectfully request that the Court deny the TRO Motion.

Dated: August 11, 2025

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L.R. 11-6.1 Certification

Counsel of record for Respondents certifies that this brief contains 2,378 words, which complies with the word limit of L.R. 11-6.1.