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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ISLAM DZHATDOEV,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*

Respondents.

No. 8:25-cv-01713-SSS-AJR

RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER (DKT. 5)

[Declarations of Evelyn Navarro and Supervisory Border Patrol Agent Michael B. Sveum filed concurrently herewith]

Hon. Sunshine Suzanne Sykes
United States District Judge

RESPONDENTS' OPPOSITION TO *EX PARTE* TRO APPLICATION

I. INTRODUCTION

The Court should deny Petitioner's *ex parte* Application for a Temporary Restraining Order ("TRO Application" or "TRO App.") (Dkt. 5). First, Petitioner cannot meet the high burden for his request seeking his immediate release, because Petitioner was arrested pursuant to a properly executed Warrant for Arrest of Alien and re-detained "for reasons related to terrorism." Declaration of Supervisory Border Patrol Agent Michael B. Sveum ("SBPA Sveum Decl.") ¶ 6. Second, Petitioner's request that he be kept within this judicial district seeks relief that is not available through habeas, and such an order would be statutorily barred. *See* 8 U.S.C. § 1252(g). 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. BACKGROUND

Petitioner and his daughter are Russian citizens who applied for admission to the United States. Declaration of Evelyn Navarro ("Navarro Decl.") ¶ 3. On October 25, 2023, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") served Petitioner and his daughter with Notices to Appear ("NTA") charging them as inadmissible to the United States as immigrants who were not in possession of a valid entry document. *Id.* ¶ 4.

On or about October 26, 2023, Petitioner was granted parole into the United States, which expired on or about October 23, 2024. SBPA Sveum Decl. ¶ 6. Sometime after Petitioner was released, U.S. Customs and Border Protection received information about Petitioner related to terrorism. *Id.* On or about July 29, 2025, Petitioner was arrested by federal officers and taken into ICE custody in Los Angeles. Navarro Decl. ¶ 4. Because Petitioner was arrested with his child, on July 30, 2025, they were transported to the South Texas Family Residential Center in Dilley, TX so they could remain together. *Id.* ¶ 5. Petitioner and his child stayed at a hotel in San Antonio until they could be transferred to that residential facility. *Id.* ¶ 7. On July 31, 2025, the South Texas Family Residential Center rejected their residence due to an alert on Petitioner's file. *Id.* ¶ 8. ICE decided at this point to sever the two cases, and Petitioner was ultimately transferred to Adelanto ICE Processing Center where he remains today. *Id.* ¶¶ 9, 12. Petitioner's daughter was taken to Building Bridges Foster Family Agency in Ontario, CA. *Id.* ¶ 11.

IV. ARGUMENT

Petitioner's TRO Application should be denied. Petitioner's habeas petition identifies five causes of action, all based on his alleged wrongful arrest or detention. Dkt. 1 ("Petition" or "Pet.") ¶¶ 25-40. In his TRO Application, Petitioner primarily argues that there was no probable cause or warrant for his arrest. TRO App. at 6. Petitioner cannot establish a likelihood of success on any of these claims. Petitioner similarly cannot establish irreparable harm. Finally, the balance of interests favors the government.

A. Petitioner's Request for a Mandatory Injunction Requiring His Immediate Release from ICE Custody Should Be Denied

Petitioner seeks a mandatory injunction that he be immediately released from ICE custody. Dkt. 5-1 ("TRO App.") at 3, 9. Because Petitioner seeks a mandatory injunction, the already high standard he must meet is "doubly demanding." *Garcia*, 786 F.3d at 740. Petitioner must establish that the law and facts clearly favor his position, not simply that he is likely to succeed. *Id.* 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. Petitioner's wrongful arrest claims lack subject matter jurisdiction in District Court.

Plaintiff's claims for wrongful arrest should be denied because the Court lacks jurisdiction over any such claim. As the Ninth Circuit has explained:

> Melchor Karl T. Limpin appeals pro se from the district court's judgment dismissing for lack of subject matter jurisdiction his action alleging that he was wrongfully arrested and detained in connection with removal proceedings. .... The district court properly dismissed Limpin's action for lack of subject matter jurisdiction because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction.

Limpin v. United States, 828 Fed. Appx. 429 (9th Cir. 2020) (citing 8 U.S.C. § 1252(g)).

A claim may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that:

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . 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.

"When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions[:] . . . [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 482 (1999) (emphasis in original).

As discussed above, there is thus no jurisdiction for complaining that the non-citizen should be freed because they were subjected to "wrongful arrest." *See Sissoko v. Rocha*, 509 F.3d 947, 948-49 (9th Cir. 2007) (where detention arose from decision to commence removal proceedings, Section 1252(g) stripped any court of jurisdiction over Fourth Amendment false arrest claim).

Nor can a litigant sidestep section 1252(g) by describing his claim as an attack on ICE's failure to follow its internal guidance, as if to make it seem as if it were a reviewable collateral challenge or a severable legal question. *See, e.g., Pomaquiza v. Sessions*, 2017 WL 4392878, at *3 (D. Conn. Oct. 3, 2017) ("Nor is the reasoning any different if [plaintiff]'s claim is re-framed as a challenge to the government's *procedures* that that govern whether to deny a stay of removal, as distinct from a direct challenge to the decision itself denying a stay of removal. Both types of claims equally arise from the decision to execute the order of removal[.]") (emphasis in original)).

Accordingly, the "false/wrongful arrest" claims provide Petitioner no basis for seeking habeas release from Petitioner's immigration detention.

2. Petitioner's re-detention was statutorily permissible under Section 1226(b) and his continued detention is mandatory under Section 1225(b)(2)(A).

ICE and its component ERO have the discretion to detain certain non-citizens "pending a decision on whether the [non-citizen] is to be removed from the United States." 8 U.S.C. § 1226, et. seq.(a); *see* 8 U.S.C. § 1225(b)(2)(A). Provided the non-citizen does not fall under the § 1226(c) mandatory detention provisions, ICE/ERO may either "continue to detain the" non-citizen or "release the [non-citizen] on" bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

Here, Petitioner was lawfully arrested for "reasons related to terrorism." SBPA Sveum Decl. ¶ 6. Contrary to Petitioner's contention, the arrest was made pursuant to a lawfully issued Warrant for Arrest of Alien (Form I-200). *Id.* at ¶ 6, Exh. A. Though Petitioner argues that "[t]here is no change in Petitioner's circumstances that would justify

Petitioner's re-detention," *Id.* at 7, there has been a material change in Petitioner's circumstances. After Petitioner was released, DHS received new information regarding the Petitioner relating to terrorism. SBPA Sveum Decl. ¶ 6. Upon discovery of this information, the Department was legally permitted to re-arrest Petitioner arrest pursuant to 8 U.S.C. § 1226(b) and detain him under 8 U.S.C. § 1225(b)(2)(A), which allows for the detention of applicants for admission during the pendency of their removal proceedings. As Petitioner arrived at the US border seeking admission, he is considered an applicant for admission and an arriving alien, even if paroled into the United States. 8 C.F.R. § 1.2 ("Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry . . . whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act. . . . "). Petitioner's removal proceedings are ongoing and progressing, TRO App. at 7, and therefore he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

The Supreme Court has previously held that, unlike detention after the entry of a final order of removal, pre-removal-order detention, such as Petitioner's, has "a definite termination point": the end of administrative removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 529 (2003). The Supreme Court also found that detaining a noncitizen under § 1226(c) without an individualized determination of dangerousness or flight risk did not violate due process. *Id.* at 524-526. Petitioner cannot establish a likelihood of success on any of his claims. Because Petitioner cannot establish that the facts and law "clearly favor" his position, his request for a mandatory injunction requiring his immediate release from ICE custody should be denied.

B. Petitioner's Request for a Prospective Injunction Prohibiting Any Transfer Outside of this District Should Be Denied

1. Petitioner's requested relief is unavailable under habeas and such an order would be statutorily barred.

Petitioner requests that the Court issue an order enjoining the Department of

Homeland Security ("DHS") from transferring him outside of this judicial district. TRO App. at 2, 9. However, Petitioner cannot obtain the relief he seeks through a habeas petition. The writ of habeas corpus, pursuant to 28 U.S.C. § 2241, is limited to attacks by prisoners upon the fact or duration of their custody, with the sole remedy being release. *Preiser v. Rodriguez*, 411 U.S. 475, 484, 498, (1973); *Crawford v. Tekle*, 599 F.2d 890, 891 (9th Cir. 1979); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). 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 Immigration and Nationality Act ("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 keep Petitioner in this district.

C. Petitioner Cannot Show Irreparable Harm

Petitioner has not demonstrated that he will suffer irreparable injury without his requested relief. 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. TRO App. at 8. 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. ERO has no plans to move Petitioner nor his daughter to another facility at this time. Navarro Decl. ¶ 16. Though petitioner states that his counsel is located in this district, TRO App. at 8, Petitioner fails to demonstrate that he will not be able to access counsel while at another detention center.

Petitioner also argues that his daughter is in Office of Refugee Resettlement ("ORR") custody in this district. *Id.* ERO has provided Petitioner and his counsel with contacts to arrange calls with Petitioner's child and requested assistance from the ICE Custody & Removal Coordinator to ensure continuous communication is maintained between the Petitioner and his child. Navarro Decl. ¶¶ 13-15. Petitioner spoke to his child by phone on August 6, 2025. *Id.* ¶ 14. Further, ERO is amenable to releasing Petitioner's child to a family member or friend if discharged from ORR custody. Navarro Decl. ¶ 16.

D. 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

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

Dated: August 7, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

Counsel of record for Respondents, certifies that the memorandum of points and authorities contains 2,924 words, which complies with the word limit of L.R. 11-6.1.