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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

SALIM NIZAR ESMAIL, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents*.	No. 2:25-cv-08325-WLH-RAO **RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER** Hon. Wesley L. Hsu U.S. District Judge

I. INTRODUCTION

Last week, Petitioner—**a convicted attempted murderer**—was lawfully detained pursuant to his final order of removal. He now seeks the extraordinary remedy of immediate release on an emergency basis. But Petitioner does not (and cannot) carry his heavy burden to justify such *ex parte* relief. His TRO Application should be denied.

First, rather than provide grounds that would be sufficient for such drastic relief, Petitioner asserts that the Court must issue a TRO requiring his release because of his suspicions that purported regulatory violations occurred during his detention—*e.g.*, he *may not have* been provided an informal interview or that the wrong official *might have* signed his Notice of Revocation. But he offers no evidence establishing that such violations of internal regulatory procedures actually occurred. Instead, he improperly seeks to foist his stringent evidentiary burden as the *ex parte* applicant upon Respondents. And even assuming any such violations of specific detention procedures did, in fact, occur, ordering immediate release of Petitioner under habeas jurisdiction is not the applicable remedy—least of all on an *ex parte* TRO basis. The remedy for not getting an informal interview, for example, should be to get an informal interview. Not instant release. Indeed, courts reject such a disproportionate remedy under analogous circumstances. This case is no exception.

Second, Petitioner speculates that he might be removed to a third country without due process. Such speculation is no basis to enjoin the United States. Nor is Petitioner's requested procedure a proper remedy either—particularly on an *ex parte* basis. Instead, such a procedure invites this Court to effectively upend a prospective future enforcement of a final removal order, via a TRO no less, which would potentially exceed 8 U.S.C. § 1252(g)'s jurisdiction-stripping provision over judicial review of executions of final removal order, as well as 8 U.S.C. § 1252(a)(5) and § 1252(b)(9)'s limitations imposed on judicial intervention in the petition for review process. The Court should reject Petitioner's invitation.

Accordingly, this Court should deny the instant *ex parte* TRO Application.

II. BACKGROUND

A. Regulatory Framework.

Under 8 U.S.C. § 1231(a), when an alien, like Petitioner, has been ordered removed, the Attorney General must remove the alien within a period of 90 days known as the "removal period." If "there is no significant likelihood that the alien will be removed in the reasonably foreseeable future," then the alien may be released under an Order of Supervision (OSUP). *Id.* § 241.13(g)(1). But an OSUP may be revoked and the alien detained if, for example, he violates his "conditions of release." *Id.* § 241.4(l)(1). Or when "in the exercise of discretion" of designated officials, "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien[.]" *Id.* § 241.4(l)(2)(iii).

B. Petitioner's Criminal History and Relevant Immigration Proceedings.

Petitioner, Salim Esmail is a citizen of Tanzania. *See* Dkt. No. 4, at 8:1. After arriving to the United States, in 1993, Petitioner was convicted of attempted murder and was sentenced to 17 years in prison. Dkt. No. 4-1, at 3. Then in 2011, Petitioner was incarcerated, again; this time for 132 days. *Id.*

C. Relevant Immigration Proceedings

While Petitioner was incarcerated for attempted murder, removal proceedings were initiated against him. *Id.* at 3, 5. He subsequently was referred to immigration court for withholding or deferral of removal only proceedings. *Id.* at 5. And in 2006, the immigration judge granted deferral of removal to Tanzania under Article III of the U.N. Convention Against Torture. *Id.*

On August 18, 2008, a final order of removal was issued. *Id.* at 8.

On October 21, 2011, the government decided to release Petitioner from immigration custody under an Order of Supervision. *Id.*

D. Petitioner's Present Detention.

On September 2, 2025, ICE issued a Notice of Revocation of Release to Petitioner (the Revocation), which it personally served him with on the same date. *Id.* at 19-20. The

Revocation was based on review of Petitioner's file, his personal interview, and orders provided by ICE to Homeland Security Investigations personnel. *Id.* Petitioner was then detained by ICE and subsequently transported to a detention facility in Arizona, where he is currently detained. *Id.* at 3.

III. ARGUMENT

As the party seeking the "extraordinary remedy" of a temporary restraining order, Petitioner must establish: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable injury absent an injunction; (3) the balance of equities tips in his favor; and (4) an injunction favors the public interest. *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 652 (9th Cir. 2020) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)); *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995) (explaining that the standard for issuing temporary restraining orders is identical to issuing preliminary injunctions). When, as here, the government is a party, "these last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

A. The Court Should Deny Petitioner's Request for His Immediate Release.

1. Petitioner is Not Likely to Succeed on the Merits.

As his basis for immediate release, Petitioner claims certain agency regulations may have not been adhered to during his detention; specifically, (1) that it is unclear whether an authorized person signed the Revocation, (2) that the Revocation did not sufficiently detail the basis for Petitioner's detention, and (3) that there is no documentation substantiating that the "informal interview" took place supervision. But courts reject such purported violations of specific elements of revocation process as a basis for release. *See, e.g.*, *Barrios v. Ripa*, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) ("Even if Petitioner could establish that Respondents violated their OSUP revocation procedures, the Court finds that Petitioner's release from detention, or a stay of removal, would not be appropriate."). Just as in the parallel context of BOP incarceration, a prisoner would not become entitled to release from incarceration simply because some regulation addressing

a specific aspect of inmate intake procedures was not followed. Rather an injunctive remedy should be narrowly tailored to the specific procedural harm that was actually threatened by the regulatory procedure. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165-66 (2010). If Petitioner did not get an informal interview, for example, the narrow remedy would be an informal interview. Not release, as if it were a penalty imposed for any regulatory non-compliance.

Even so, rather than carrying his heavy burden as the *ex parte* applicant seeking extraordinary injunctive relief to submit evidence sufficient to prove that such regulations were, in fact, violated, Petitioner instead offers a slew of speculation. *First*, Petitioner supplies a self-serving declaration from his counsel, speculating that he is "suspicious that the officer who revoked Mr. Esmail's supervision was the person authorized by regulation to do so." Dkt. No. 4-1, at 25 (Declaration of Douglas Jalaie (Jalaie Decl.)), at ¶ 9. *Next*, Petitioner assert that he and his counsel "believe" that Revocation "did not contain a valid reason to afford [him] sufficient notice of why he was being detained." Dkt. No. 4, at 10:26-28. *Finally*, rather than assert no informal interview was actually held, counsel's self-serving declaration speculates—*yet again*—that "there was no documentation that this interview took place." Dkt. No. 4-1, at 25 (Jalaie Decl.), at ¶ 9.

As the party seeking the extraordinary remedy of a TRO, Petitioner cannot shift his burden to the United States to fill this evidentiary void by speculating about what might not have been done to his counsel's satisfaction. Nor can his counsel's speculations make up the difference, either—let alone warrant the extraordinary remedy of release. Indeed, courts in this District have rejected such bald assertions in the absence of material evidence submitted by the applicant. *See, e.g.*, *Ton v. Noem*, No. 5:25-cv-02033-SB-AGR, Dkt. No. 17 (Order Denying Application for Preliminary Injunction), at 7-8 ("while Petitioner claims that the government failed to follow the procedures in § 241.13, he presents no procedural information . . . When asked at the hearing whether the record in this case contained any evidence of the challenged process, his counsel responded: 'I just have the absence of evidence. . . . I have nothing.' … Plaintiff has not shown in these circumstances

… that the government failed to observe its own procedures in reaching its decision. . . . On this barren record, Petitioner has not shown a likelihood of success on the merits"). This alone is reason enough to deny Petitioner's TRO. Indeed, the first factor, likelihood of success on the merits, is "the most important *Winter* factor." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 756 (9th Cir. 2017). And where, as here, the "movant fails to meet this threshold inquiry, the court need not consider the other factors." *Id.*

And even if Petitioner had evidenced such regulatory violations, the Supreme Court has made clear that "[i]f a less drastic remedy . . . [i]s sufficient to redress [a movant's] injury, no recourse to the additional and extraordinary relief of an injunction [i]s warranted." *Monsanto*, 561 U.S. at 165-66. The plainly less drastic remedy here would be a re-issuance of Petitioner's Notice of Revocation further detailing the basis for his detention, signed by an authorized official and followed by the prompt scheduling of an informal interview. Respondents would readily comply with such an order, and if the Court grants Petitioner's TRO Application, they would respectfully request the opportunity to correct any such regulatory errors within a reasonable period of days, particularly given the severity of Petitioner's criminal history and considering that he has only been detained for nine days.

2. Petitioner Does Not—*And Cannot*—Show Irreparable Harm.

The mere possibility of irreparable harm is not enough to warrant the "extraordinary remedy" of emergency injunctive relief—Petitioner must make a "clear showing" of irreparable harm. *See Winter*, 555 U.S. at 22. But he makes no such showing. Rather, Petitioner effectively argues that being subjected to unlawful detention itself constitutes irreparable injury. Such an argument "begs the constitutional questions presented in his petition by assuming that [he] has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Indeed, Petitioner's "loss of liberty" is "common to all [non-citizens] seeking review of their custody or bond determinations." *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 while Petitioner speculates that his transfer to Arizona may jeopardize his medical conditions, *see, e.g.*, Dkt. No. 4, at 15 ("there is no guarantee that he will receive the medical care he needs"), tellingly his own declaration does not assert that he has no access to medical care or that he is without his medications since being detained. *See generally* Dkt. No. 4-1, at 3. Nor does he cite *any* authority establishing that detainees cannot be transferred to other districts, much less authority explaining how that would supposedly constitute "irreparable harm" for an INA detainee. That is because there is no prohibition on transferring alien detainees subject to removal. In fact, the opposite is true, Congress has afforded the Attorney General discretion to "arrange for appropriate places of detention for aliens detained pending removal." 8 U.S.C. § 1231(g)(1); *Y.G.H. v. Trump*, 2025 WL 1519250, at *9 (E.D. Cal. May 27, 2025) ("8 U.S.C. § 1231(g)(1) 'gives both 'responsibility' and 'broad discretion' to the Secretary 'to choose the place of detention for deportable aliens.'") (quoting *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022)) (citing *Comm. Of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986), *amended by* 807 F.2d 769 (9th Cir. 1986))); *Van Dinh v. Reno*, 197 F.3d 427, 433-34 (10th Cir. 1999) ("The Attorney General's discretionary power to transfer aliens from one locale to another, as she deems appropriate, arises from this language") (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)).

Thus, whether Petitioner here may be detained in the District of Arizona (where he is currently), in this District, or in the Eastern District of California, falls well short of a genuine irreparable harm. Petitioner's failure to identify a cognizable form of irreparable harm is an independent reason to deny his TRO.

3. The Balance of Interests Favors the Government.

Finally, 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[.]"). Given the severity of Petitioner's criminal history, this public interest plainly outweighs Petitioner's private interest here.

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

Petitioner's request for the Court to issue a TRO prohibiting his transfer to a third country without due process should similarly fail. At the outset, such a request is no more than improper attempt to prospectively enjoin the government to follow the law. *See, e.g.*, *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."); *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.").

At the same time, Petitioner's specifically requested relief is particularly improper as he openly seeks a TRO purporting to re-structure the manner and method of how removal process must be initiated and conducted, *i.e.* through an individualized fear an individualized opportunity to challenge removal through a reasonable fear interview. Dkt. No. 4-2, at 2. Such a re-structing runs headlong into the Attorney General's execution of a final removal for which there is no jurisdiction. *Long Ton*, Dkt. No. 17, at 3 ("Section 1252(g) strips courts of jurisdiction over "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."). Ultimately, obligating a potential removal to be delayed by TRO for the purpose of such hypothetical proceedings is highly speculative and is not the proper subject of an *ex parte* TRO Application.

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IV. CONCLUSION

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

Dated: September 11, 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 2,495 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 11, 2025

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