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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOAQUIN DAVID RICO-TAPIA, Petitioner, vs. SHIKHA DOSANJ, Warden, Federal Detention Center, Honolulu, Hawaii, in his official capacity; SERGIO ALBARRAN, Field Office Director, San Francisco Field Office Immigration and Customs Enforcement, in his official capacity; PAM BONDI, Attorney General of the United States, in her official capacity; KRISTI NOEM, Secretary of Homeland Security, in her official capacity, Respondents.	CASE NO. CV25-00379 SASP-KJM RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER [ECF No. 11]; DECLARATION OF DEPORTATION OFFICER LEON HO; CERTIFICATE OF SERVICE

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RESPONDENTS'[1] MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER [ECF No. 2]

I. INTRODUCTION

Petitioner is a Venezuelan national who is currently in removal proceedings under 8 U.S.C. § 1229a ("240 Proceedings") and is lawfully detained in Immigration and Customs Enforcement ("ICE") custody pursuant to 8 U.S.C. § 1225(b). Petitioner's Motion for Temporary Restraining Order ("TRO") impermissibly requests that the Court order the Petitioner's immediate release and hold a custody hearing, enjoin moving or transferring Petitioner outside this district, and prohibit Respondents "from placing or maintaining [Petitioner] in expedited removal while this habeas case is pending[.]" These requests mirror the requests in his Petition for Writ of Habeas Corpus [ECF No. 2 at PageID.33] and suffer from many of the same flaws identified in Respondents' Return to that Petition [ECF No. 15]. Respondents request the Court deny the Petition and then deny this TRO as moot. If the Court reaches the TRO however, it should be denied in its entirety.

The only actual injunctive relief sought in the TRO is that Respondents be enjoined from transferring Petitioner out of this district while litigation remains

[1] Respondents have amended the caption to reflect the current Warden of Federal Detention Center Honolulu, as well as the current Field Officer Director, San Francisco Field Office Immigration and Customs Enforcement. *See* Fed. R. Civ. P. 25(d).

active in this Court. As this Court noted at the September 16, 2025 status conference, that request is moot in light of the Court's September 12, 2025 Order. ECF Nos. 8 and 12. The remaining relief must be denied because it is not injunctive and is inappropriate for a TRO as it does not seek to maintain the status quo, and further because the Petitioner cannot carry his burden to satisfy the factors identified in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

II. BACKGROUND

A. Petitioner's arrival and first Section 240 Proceedings

Petitioner is a Venezuelan native and citizen of Colombia, arrested approximately one mile north of the port of entry at Eagle Pass, Texas in August 2022. Declaration of Deportation Officer Leon Ho ("Ho Dec.") at ¶¶ 7, 8. At the time his arrest, Petitioner was determined to have unlawfully entered the United States without inspection from Mexico. *Id.* at ¶ 8. On August 14, 2022, Petitioner was issued a Form I-94 and paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5); his parole expired on October 14, 2022. *Id.* at ¶ 9.

On October 5, 2022, Petitioner reported to San Francisco ICE Enforcement and Removal Operations ("ERO"). *Id.* On December 27, 2022, the Petitioner reported to ICE ERO Alternatives to Detention ("ATD") Unit for further processing, where he was served with a Form I-862, Notice to Appear ("NTA"), as

well as a Form I-220A, Order of Release on Recognizance. *Id.* at ¶ 10. He was released on his own recognizance. *Id.*

On February 13, 2024, the Section 240 Proceedings commenced against the Petitioner in the Concord Immigration Court outside of San Francisco, California. *Id.* at ¶ 11. On July 23, 2025, DHS exercised its discretion and moved to dismiss the removal proceedings because it determined that Petitioner qualified for expedited removal. *Id.* at ¶ 12. That same day, the immigration court granted DHS's motion to dismiss without prejudice. *Id.* Petitioner, appearing *pro se*, opposed the motion but did not appeal the decision, as was his right. *See* 8 C.F.R. §§ 1003.3 (Notice of Appeal), 1003.38 (Appeals). Petitioner was arrested that same day. *Id.* at ¶ 13. In connection with his arrest and detention, he was issued a Form I-200 Warrant for Arrest of Alien, and a Form I-286, Notice of Custody Determination. *Id.*

B. Expedited removal and current Section 240 Proceedings

DHS issued Petitioner a Form I-860, Notice and Order of Expedited Removal, on August 12, 2025. Petitioner was referred to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview with an asylum officer, pursuant to 8 U.S.C. § 1225(b)(1)(B). That asylum officer determined that Petitioner has a credible fear of persecution and may be eligible for asylum. Ho Dec. at ¶ 15. On September 16, 2025, based on the credible fear determination by

the asylum officer, Petitioner was issued a new NTA Form I-862, charging Petitioner as an alien present without admission or parole who is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(I) and as an immigrant not in possession of a valid entry document under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* at ¶ 16. This new NTA commenced new Section 240 Proceedings. Petitioner appeared before an immigration judge on September 17 and 25, 2025, for master calendar hearings. *Id.* at ¶¶ 16–19. While Petitioner's removal proceedings remain ongoing, he continues to be detained under 8 U.S.C. § 1225(b)(1)(B)(ii), as mandated by the statute. *Id.* at ¶ 16.

III. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER

The standards for evaluating whether to issue temporary restraining orders and preliminary injunctions are substantially identical. *O'Hailpin v. Hawaiian Airlines, Inc.*, 583 F.Supp.3d 1294, 1301 (D. Haw. Feb. 2, 2022) (citing *Washington v. Trump*, 847 F.3d 1151, 1159 n. 3 (9th Cir. 2017)). "In either case, the relief is an extraordinary remedy never awarded as of right." *Id.* (internal quotation and citation omitted). The party seeking the relief must show (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). And "[w]hen the government is a party, these last two

factors merge." *All. for Wild Rockies v. Higgins*, 690 F.Supp.3d 1177, 1185 (D. Idaho 2023) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The movant must carry its burden of persuasion by a "clear showing" of the four required elements. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). A preliminary injunction or TRO may also issue upon a showing that there are "serious questions going to the merits" – a lesser showing than likelihood of success on the merits – if the "balance of hardships [. . .] tips sharply in the plaintiff's favor," and the other two *Winter* factors (irreparable harm and public interest) are satisfied. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).

IV. PETITIONER IS NOT ENTITLED TO THE REQUESTED RELIEF.

A. Petitioner Cannot Establish a Likelihood of Success on the Merits.

Petitioner cannot establish a likelihood of success on the merits for several reasons. The Motion for TRO inappropriately requests relief that is not injunctive, and instead mirrors the relief sought in his Petition for Writ of Habeas Corpus. Petitioner's claims are also moot due to the pending Section 240 Proceedings, and they are additionally barred by 8 U.S.C. § 1252. Further, Petitioner's claims do not sound in habeas, and even if this Court considers the merits of his arguments, his detention is lawful.

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1. Petitioner is not requesting injunctive relief or to preserve the status quo.

Temporary restraining orders and preliminary injunctions serve fundamentally different purposes. "'The purpose of a temporary restraining order to preserve an existing situation in status quo until the court has an opportunity to pass upon the merits of the demand for a preliminary injunction.'" *All. for Wild Rockies v. Higgins*, 690 F.Supp.3d 1177, 1185 (D. Idaho 2023) (quoting *W. Watersheds Project v. Bernardt*, 391 F.Supp.3d 1002, 1008–09 (D. Or. 2019)). The critical difference between the two is the duration of relief. Preliminary injunctions enjoin certain actions throughout the course of the litigation, while temporary restraining orders "serv[e] their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer." *Id.* at 1186 (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438–39 (1974)). And further, injunctive relief must be narrowly tailored and "no more burdensome to the defendant than necessary to provide complete relief" to the moving party. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021) (citation omitted).

The only requested relief that seeks to preserve the status quo is Petitioner's request that he not be transferred from this district while this litigation is pending. That request is moot, as the Court has already ordered that Petitioner not be transferred. ECF Nos. 8 and 12. The remaining requested relief – that Petitioner

be released from custody, that the Court hold a bond hearing, and that the Court prohibit Respondents from placing Petitioner into expedited removal proceedings – is *not* injunctive relief, does not seek to maintain the status quo, and is inappropriate for a TRO. *See Granny Goose Foods*, 415 U.S. at 438–39. Instead, Petitioner has restated his requested habeas relief and styled it as a TRO. His requests should be rejected on this basis alone. *See Lopez v. Derr*, Case No. CV22-00318 LEK-RT, 2022 WL 3586459, at *2 (D. Haw. Aug. 22, 2022) (concluding the court lacked jurisdiction to order the Warden of FDC Honolulu to commence removal proceedings because the decision *whether* and *when* to commence proceedings is barred by 8 U.S.C. § 1252(g) (citing *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002)). Petitioner's attempt to obtain relief that is not injunctive, nor narrowly tailored to the specific harms alleged, should be rejected. *See Granny Goose Foods*, 415 U.S. at 438–39; *All. for Wild Rockies v. Higgins*, 690 F.Supp.3d at 1185.

2. Petitioner's claims are moot.

Petitioner's TRO request is largely based on the complaint that DHS placed him in expedited removal process without a credible fear interview. *See* ECF No. 2 at PageID.155–58. However, as explained in Respondents' Return to Petition, this issue is moot. ECF No. 15 at PageID.292–94. For the same reasons stated

therein, any TRO request based on the outdated expedited removal classification should be denied.

3. Petitioner's challenges to his detention fail.

Notwithstanding the jurisdictional bars to his TRO claims, Petitioner's request for release from federal custody and bond hearing, *see* TRO at PageID.160–61, should be denied because Petitioner is lawfully detained, is not entitled to a bond hearing from *this* Court, and is being afforded all requisite due process.

a. *Petitioner's detention is lawful pursuant to 8 U.S.C. § 1225(b).*

As explained in Respondents' Return, ECF No. 15 at PageID.301–03, Petitioner's detention is statutorily mandated as he is an "applicant for admission" initially subject to expedited removal proceedings, who is being detained pending further Section 240 Proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii). For the same reasons set forth in the Return, Petitioner's request for immediate release should be denied.

b. *Jurisdiction over Bond lies with the Immigration Court.*

Not only is detention lawful, but Petitioner is not entitled to a bond hearing to determine the conditions of his release. As explained in Respondents Return, ECF No. 15 at PageID.303–04, the only method for bond is under 8 U.S.C. § 1226, and even that scenario the bond decision is made by an immigration judge.

Jennings v. Rodriguez, 583 U.S. 283, 288 (2018). For the same reasons set forth in the Return, the Court should deny Petitioner's TRO as to release and a bond hearing.

B. Petitioner Cannot Show a Likelihood of Suffering Irreparable Harm in the Absence of Preliminary Relief.

Petitioner cannot show irreparable harm due to his detention. Indeed, detention pending his immigration court proceedings has been mandated by Congress, and his attempt to characterize mandatory government action as irreparable harm must fail. *See* 8 U.S.C. § 1225(b).

Petitioner addresses his claim of irreparable harm in less than one page of argument. ECF No. 2 at p. 10. He argues that irreparable injury will occur due to his continued detention and potential transfer from this district. *Id.* The transfer issue is moot. *See* ECF No. 12. And regarding his detention, Petitioner fails to acknowledge or otherwise explain how his statutorily required detention constitutes an irreparable injury that merits relief. *See* 8 U.S.C. § 1225(b).

To the extent that Petitioner argues that irreparable harm will occur because he believes that his detention should be under 8 U.S.C. § 1226, rather than § 1225, those arguments are misplaced in a request for injunctive relief. Rather, those arguments should be made before the immigration court in the ongoing Section 240 Proceedings and then appealed as appropriate to the BIA or the Ninth Circuit. Section 1252 of the INA states that "[j]udicial review of all questions of law and

fact, *including interpretation and application of constitutional and statutory provisions* . . . shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9). The immigration court has jurisdiction to determine whether the Respondents have correctly interpreted and applied constitutional and statutory provisions as related to Petitioner's removal proceedings.

C. The balance of equities and public interest factors favor DHS.

The final two factors—considered jointly where the government is a party—look to the equities involved and the public interest in the issuance of an injunction. Here, both factors weigh against granting the requested injunctive relief, and Petitioner argues only that the detention is unlawful and that the Court should waive the bond requirement in Fed. R. Civ. P. 65(c). ECF No. 12 at pg. 11.

Respondents have a strong interest in uniformly applying immigration policy as part of a comprehensive and unified system. *See, e.g., E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 681 (9th Cir. 2021); *Kahn v. I.N.S.*, 36 F.3d 1412, 1415 (9th Cir. 1994). Likewise, the government has an interest in pursuing immigration policies it chooses. *See New York v. United States Dep't of Homeland Sec.*, 969 F.3d 42, 87 (2d Cir. 2020). An injunction in this case would harm the federal government's ability to rely on its congressionally mandated authority to fulfill its statutory mission of enforcing immigration law. Accordingly, the third

and fourth factors weigh in favor of the Respondents, and the TRO should be denied.

D. If the Court Grants Injunctive relief, Petitioner Should be Required to Provide a Nominal Bond.

Finally, if the Court decides to grant injunctive relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states that "[t]he court may issue a preliminary injunction or a temporary restraining order *only if the movant gives security* in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." (emphasis added).

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V. CONCLUSION

This Court should reject Petitioner's attempt to repackage his Petition for Writ of Habeas Corpus as a TRO while seeking relief that spans well beyond injunctive relief narrowly tailored to address Petitioner's alleged harms. Petitioner has further failed to satisfy the factors necessary to demonstrate that he is entitled to injunctive relief. The Court should therefore deny the TRO.

DATED: September 30, 2025, at Honolulu, Hawaii.

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/s/ Joseph M. McGinley
By_____
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CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

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DATED: September 30, 2025, at Honolulu, Hawaii.

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