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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BARBARA GOMES MARQUES MAY,

Petitioner,

v.

THOMAS GILES, et al.,

Respondents.

No. 2:25-cv-08816-AH-DFM

RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 3]

Honorable Anne Hwang
United States District Judge

I. INTRODUCTION

Petitioner, who has been in immigration detention since September 16, 2025, filed a habeas petition that same day of September 16, 2025 [Dkt. 1] (the "Petition"). On September 26, 2025, Petitioner then filed an *ex parte* application for a temporary restraining order [Dkt. no. 3] (the "TRO Application").[1] Petitioner fails to meet her heavy burden to establish entitlement to the issuance of a TRO for multiple reasons.

First, Petitioner, a Brazilian citizen, concedes that she entered the United States on a tourist visa, which she then overstayed. *See* Petition, ¶ 20. She has had a final order of removal since November 21, 2019, which she claims to have been unaware of. *Id.* Petitioner does not explain when exactly she and/or her counsel learned of that removal order. Yet Petitioner filed an I-485 application to adjust her status back on May 15, 2025, and her husband filed an I-130 petition for alien relative that same day. *Id.* ¶¶ 21-22. She and her counsel thus would have known, for months, that she had a final removal order, and that she lacked lawful status to remain in the United States.

Completely absent from Petitioner's papers, by contrast, is any grounds for contesting her removability. Petitioner argues she did not receive notice of her NTA, but she does not provide any explanation of how she could have had lawful status, given that she had entered on a tourist visa, overstayed it, and failed to depart. She does not identify any error whatsoever in the finding that she was removable, nor any basis on which, if it was reopened in the future, she could show that the finding of her removability was somehow erroneous. Petitioner thus does not identify any grounds on which the removal order was incorrect and would be overturned, even at a theoretical level.

Second, Petitioner argues that she has had insufficient opportunity to seek reopening of her removal proceedings in the Immigration Court. But as noted above, she concedes she and her husband had applied for immigration status adjustment back in

[1] Albeit it was filed without complying with Central District of California Local Rule 7-19, which requires counsel filing such applications to contact counsel for the opposing party, here the United States, to confer in advance of filing such applications.

May of 2025. They knew at that time, at bare minimum, that she did not have lawful status and was subject to removal. They could have sought to reopen her immigration proceedings, if they had a basis to do so, which they did not.

Third, even now Petitioner **still** has not filed a motion to reopen in the Immigration Court. She had opportunity. Even looking at her Petition, it has been pending since September 16, 2025. Yet not back in May, nor after her Petition was filed on September 16, 2025, did she file a motion to reopen with the Immigration Court. Nor did she seek a stay from the Immigration Court. It is not a Due Process violation to seek to bar removal at the last moment on the grounds of wanting to file a motion to reopen in the Immigration Court in the unspecified future. Petitioner is represented by counsel in her immigration proceedings. If she had wanted to immediately contest her removal order, she could have timely done so in the immigration court. She did not.

Fourth, Petitioner complains that she may now lose her opportunity to try to reopen her removal order proceedings if she is removed. But that is incorrect. While there is a split on whether there is any jurisdiction to hear habeas claim in this context, even courts that have found limited jurisdiction have nonetheless denied TRO relief because there was no showing that the noncitizen could not continue litigating their motion to reopen while abroad, just as the law permits. *See e.g. Mohammed Alsayed Abdelsalam v. Barr*, 2021 WL 518367 (C.D. Cal. January 8, 2021).

Fifth, Petitioner is not subjected to potentially excessively prolonged detention here. The opposite; she instead complains she is being removed shortly after being arrested, not that she will be detained for more than six months.

In sum, Petitioner's claim for TRO relief fails on its jurisdiction, on its merits, and on its irreparable harm components. The application should be denied.

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. The District Court Lacks Jurisdiction Over Claims That Challenge the Merits of Petitioner's Removal Order and the Government's Decision to Enforce It.

A federal district court may not consider a claim for relief unless Congress has given the court jurisdiction to do so. *Finley v. United States*, 490 U.S. 545, 547–48 (1989); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause."). In the immigration context, Congress stripped district courts of jurisdiction to consider cases arising from the execution of removal orders by passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546 ("IIRIRA"). In passing IIRIRA, Congress repealed the prior scheme for district court review of removal orders and replaced it with more restrictive procedures. 8 U.S.C. § 1252; *Reno v. Am.–Arab Anti–Discrim. Comm.*, 525 U.S. 471, 474 (1999). Among other jurisdiction-stripping provisions in IIRIRA, 8 U.S.C. § 1252(g) deprives district courts of jurisdiction "to hear any cause or claim . . . arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute removal orders." Furthermore, § 1252(a)(2) bars district courts from reviewing most aspects of the removal process, subject to certain narrow enumerated statutory exceptions that do not apply here. Finally, 8 U.S.C. § 1252(b)(2) provides that judicial review of removal orders is vested only in appellate courts, not district courts.

Courts in this district and others have thus consistently held that district court actions seeking a stay of execution of a removal order arise from the execution of a removal order, and are thus barred by section 1252(g), regardless of whether the alien is seeking an adjustment of status. *See, e.g., Balogun v. Sessions*, 330 F. Supp. 3d. 1211, 1215-16 (C.D. Cal. 2018) (where alien was seeking to stay removal pending application for U-visa, dissolving the temporary restraining order and dismissing complaint because "a challenge to ICE's refusal to stay removal is the paradigmatic claim arising from a decision to execute a removal order. If ICE's enforcement discretion is to mean anything, it must include the discretion to decide *whether* and *when* to start removal proceedings and execute removal orders."); *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (District Court lacked jurisdiction to enjoin noncitizen's removal from United States while their motion to reopen was pending); *Martinez-Avelar v. Mayorkas*, 2021 WL 3524121, at *2-4 (C.D. Cal. April 1, 2021) (Hon. Judge Gee denying TRO and rejecting Due Process claim challenging the denial of stay of enforcement of removal order); *Pacheco-Escobar v. Unnamed Respondents*, 2014 WL 2932402, at *2 (S.D. Cal. June 30, 2014) (denying motion for "stay of removal pending resolution of the petition for review" because court lacked jurisdiction under section 1252(g)); *Alfaro-Mejia v. Holder*, 2013 WL 599876, at *2 (C.D. Cal. Feb. 15, 2013) (distinguishing *Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007), and dismissing for lack of jurisdiction because petitioner sought "an order enjoining the government from executing a removal order"); *Ma v. Holder*, 860 F. Supp. 2d 1048, 1059–60 (N.D. Cal. 2012) (dismissing habeas petition that sought "a stay of deportation during the BIA's adjudication of [petitioner's] motion to reopen"); *Rosales v. Aitken*, 2011 WL 4412654, at *3 (N.D. Cal. Sep. 21, 2011) (holding that, "regardless of how Petitioner frames this motion, [because] Petitioner seeks to halt the execution of the final orders of removal" the Court lacked jurisdiction); *De Leon v. Napolitano*, 2009 WL 4823358, at *3 (N.D. Cal. Dec. 10, 2009) (finding it "clear that . . . [a] request to halt the execution of the final orders of removal 'arise[s] from' an 'action' or a 'proceeding' brought in connection with Petitioner's removal, or from 'the decision or action' to 'execute removal orders against'

Petitioner"); *Paljusevic v. Dedvukaj*, 2009 WL 3125540, at *2 (E.D. Mich. Sept. 25, 2009) (finding no jurisdiction under section 1252(g) even though petitioner claimed he was only challenging "the decision to execute the order while his properly-filed, adjustment-of-status petition [was] pending"); *Mejia–Espinoza v. Mukasey*, 2009 WL 235625, at *3 (C.D. Cal. Jan. 27, 2009) (holding that district court lacked jurisdiction where petitioners sought to enjoin the government from executing their removal orders).

Notably, federal courts have rejected litigants' attempts to creatively circumvent the § 1252(g) jurisdiction bar by characterizing their dispute as a due process claim, rather than an action challenging the government's enforcement of a removal order. As one district court explained when confronted with that tactic:

> Here, Plaintiff filed his application to adjust his status only one week ago and only after he was discovered to have overstayed his 90–day VWP admission by over eight years, in order to avoid the consequences of his removal order. Plaintiff cannot circumvent the REAL ID Act's review provisions and express limitation of district court jurisdiction by claiming that he is pursuing in this court a due process claim that is somehow distinct from his removal order.

Benitez v. Dedvukaj, 656 F. Supp. 2d 725, 729 (E.D. Mich. 2009); *see also Ba v. Holder*, 2009 WL 5171793 (E.D. Mich. Dec. 24, 2009) ("Likewise, Plaintiff's claims in this case are primarily, if not exclusively, a vehicle through which he seeks to forestall his removal while he pursues an adjustment of status. As explained in *Benitez*, this Court lacks jurisdiction to entertain even this sort of indirect challenge to an order of removal.").

Accordingly, Petitioner has failed to establish that his request to enjoin removal via a TRO sought in a habeas petition falls under a valid exception to the jurisdictional bar imposed by these statutes.

B. Petitioner Also Fails to Establish the Merits of a Due Process Claim

Petitioner filed her Petition through counsel on September 16, 2025, and she then filed her *ex parte* TRO application on September 26, 2025. Yet Petitioner does not identify any motion to reopen that she has filed in Immigration Court, or established how she lacked any ability to do so. She has not established that there was a due process violation that prevented her from timely seeking a stay from the Immigration Court, as provided by regulation, should that be found warranted. Indeed, her claim of "lack of notice" is a simple one. If she could file a petition, she could file a motion to reopen. She did not lack opportunity to make it.

Nor does she establish that such a motion to reopen in the Immigration Court would be meritorious, given that she does not identify anything erroneous in the Immigration Court's finding that she was removable. To the contrary, she admits she (a) entered the United States on a tourist visa; and (b) then overstayed that tourist visa remaining in the United States for several years. Petitioner complains of not getting sufficient notice of the NTA that led to her final removal order, but even if one assumed that were true, she does not explain how a different result would have been released if she had sufficient notice. Presumably, Petitioner did not attend the NTA because she had no argument to present as to why she had lawful status. And she still continues to fail to identify any argument as to why she putatively had lawful status. She simply overstayed a tourist visa. And she did not obtain a renewal. That is an extremely basic issue. And she cannot reasonably have been unaware that by staying in the United States for years, after entering the United States on a basic tourist visa, that she lacked lawful status to remain in the United States. Indeed, she affirmatively applied to adjust her status in May of 2025, after getting married, evidencing that she knew she lacked status.

When detainees are not represented by counsel and have had no opportunity to seek remedies before being taken into long-term detention pursuant to a removal order issued many years ago, some District Courts have found that a limited due process right may be reviewed in habeas. The lead such case is *Chhoeun v. Marin*, 306 F. Supp. 3d

1147 (C.D. Cal. 2018). But that is patently not the case here. Petitioner is not facing the prospect of an indefinite detention, but rather a potential timely removal. She is represented by counsel, who could pursue and obtain any remedies in Immigration Court that were applicable. And she has been actively pursuing immigration status adjustments since at least May of 2025. She has not established a meritorious claim for deprivation of due process because now that she is facing removal she wants, in the unspecified future, to file a motion to reopen.

C. Petitioner Also Fails to Establish Irreparable Harm, Since She Can Continue to Litigate a Motion to Reopen Even If Removed.

As discussed above, even for those District Courts finding some degree of jurisdiction to review a habeas claim asserting due process claims relative to filing a motion to reopen, and even if a showing is made on the merits of such a due process claim, that still does not thereby establish irreparable harm warranting a TRO because the immigrant can continue to litigate a motion to reopen after their removal. *See Mohammed Alsayed Abdelsalam v. Barr*, 2021 WL 518367 (C.D. Cal. January 8, 2021) (Hon. Judge Bernal, denying temporary restraining order because removal would not prevent continuing a reopening motion, and explaining that "Plaintiff presents no authorities or evidence supporting his assertion that his fundamental rights would be affected."). I.e., there is no irreversible loss in going back to one's native country relative to the prospect of vacating a removal order via a pending motion to reopen, unless there are some genuinely extreme circumstances involved that would somehow make it impossible to continue litigating that motion to reopen abroad (e.g. the whole country in question is ablaze with civil war, preventing any litigation).

Petitioner does not establish that her *legal rights* would be wrongfully impaired by a prospective removal to Brazil, her home country. She is not complaining of a prolonged detention as an irreparable harm in the instant TRO context, but rather that she now faces potential imminent removal. Should she have any genuinely legitimate basis for overturning her removal order—and her Petition and TRO Application do not identify such a legitimate basis—she can continue to pursue that challenge after removal.

Accordingly, Petitioner also fails to establish the irreparable harm component required to establish entitlement to the extraordinary remedy of a TRO.

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.

IV. CONCLUSION

The Respondents respectfully request that Petitioner's *ex parte* TRO Application be denied and that the Petition be dismissed.

Dated: September 29, 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 2,686 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 29, 2025

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