**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03078-WJM-KAS

JESUS MORALES LOPEZ,

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;
ROBERT GAUDIAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity; and
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

RESPONDENTS' RESPONSE TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Respondents respectfully submit the following Response to Petitioner's Motion for a Temporary Restraining Order (ECF No. 10). Petitioner's Motion should be denied for four reasons. One, the Motion should be denied without prejudice because Petitioner failed to confer. Two, the Court lacks jurisdiction to continue a hearing in immigration court—Petitioner may request a stay of that hearing before the immigration judge. Three, the relief requested in the Motion for a TRO seeks temporary relief outside the scope of

the underlying habeas proceeding. Four, Petitioner has not demonstrated imminent and irreparable harm.

BACKGROUND

Petitioner is a non-citizen who entered the country without inspection in 2006. *See* ECF No. 1 at ¶ 22. In July 2025, the U.S. Immigration and Customs Enforcement (ICE) arrested Petitioner and charged him pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as a non-citizen present in the United States who was not lawfully admitted. *Id.* at ¶ 23. Petitioner sought and was granted a $7,500 bond by an immigration judge. *Id.* at ¶ 29. The Department of Homeland Security (DHS) argued that Petitioner was subject to 8 U.S.C. § 1225(b)(2)(A), which applies to applicants for admission, and thus was subject to mandatory detention. *Id.* at ¶ 28. The immigration judge (IJ) decided to grant Petitioner release on bond. Id. at ¶ 29.

DHS appealed the IJ's custody decision, which triggered an automatic stay of the bond pursuant to 8 C.F.R. § 1003.19(i)(2).[1] *Id.* at ¶ 30. Petitioner thus remains detained at the ICE detention facility in Aurora, Colorado. *Id.* at ¶ 15.

On October 1, 2025, Petitioner filed a habeas petition challenging his detention. *See generally* ECF No. 1. Petitioner argues that he is not subject to 8 U.S.C.

---

[1] That provision reads: "**Automatic stay in certain cases**. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR–43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR–43 is subject to the discretion of the Secretary."

§ 1225(b)(2)(A) and thus is not subject to mandatory detention under that provision. *Id.* at 5-7. Specifically, Petitioner argues that he is instead subject to a different provision, Section 1226(a), which does not result in mandatory detention but instead grants him the ability to seek release on bond. *Id.* Petitioner also challenges the regulation that permitted the automatic stay of his bond during the pendency of DHS' appeal to the Board of Immigration Appeals. *Id.* at 7-11. Petitioner seeks release from custody and a declaratory judgment finding his detention, and the automatic stay provision, unconstitutional. *See id.* at 16.

On October 2, 2025, Petitioner's counsel received a notice of hearing before an immigration judge. *See* ECF No. 10 at 11-12. On October 10, 2025, Petitioner filed the instant Motion for a Temporary Restraining Order, asking this Court to issue an order barring the immigration judge from conducting the hearing. ECF No. 10 at ¶ 33. Petitioner's counsel did not confer with counsel for Respondents before filing this Motion.

The Executive Office for Immigration Review (EOIR)'s *Immigration Court Practice Manual*, Chapter 5, allows for motions to continue to be filed in immigration proceedings.[2] Petitioner does not allege that he requested a stay or continuance in the immigration court of the upcoming hearing at issue in the TRO motion. *See* ECF No. 1.[3]

ARGUMENT

---

[2] https://www.justice.gov/eoir/reference-materials/ic/chapter-5/10 (last accessed October 13, 2025).

[3] Due to the short deadline to respond, undersigned counsel was not able to obtain a declaration from ICE to confirm that no such motion was filed by Petitioner in immigration court.

I. The motion should be denied without prejudice because Petitioner failed to confer before filing it, and conferral could have addressed the issue.

The Court should deny the motion without prejudice. In violation of D.C.COLO.LCivR 7.1(a), Petitioner did not confer with counsel for Respondents before filing this Motion. Had Petitioner done so, this issue could potentially have been resolved: Petitioner could have sought DHS' position on a motion for a stay with the presiding immigration judge. Under these circumstances, it is appropriate to deny the motion, without prejudice to Petitioner refiling the motion if the issue cannot be adequately addressed by conferral.

II. This Court lacks jurisdiction to stay the immigration court proceedings.

The Court lacks jurisdiction to grant Petitioner's request to stay the upcoming hearing in immigration court.

Congress has granted immigration judges the authority to conduct proceedings to determine if a noncitizen should be removed. 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien."). "Removal proceedings are conducted by immigration judges in the United States Department of Justice who exercise the authority of the Attorney General." *Patel v. Garland*, 596 U.S. 328, 332 (2022). "Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court" by Immigration and Customs Enforcement. *Goncalves Pontes v. Barr*, 938 F.3d 1, 3–4 (1st Cir. 2019) (citing 8 C.F.R. § 1003.14(a)).

Immigration judges have the exclusive authority to make these determinations in the first instance. "Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). The decisions of the IJ generally can be appealed to the Board of Immigration Appeals (BIA). *See Sosa-Valenzuela v. Gonzales*, 483 F.3d 1140, 1145 (10th Cir. 2007) (explaining that the removal process is a "sequential proceeding" involving review by the BIA).

Congress has provided noncitizens with a vehicle to challenge, in court, these administrative decisions: to the appropriate court of appeals, through a petition for review. 8 U.S.C. § 1252(a)(5). Congress defined such review to include review of "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 from the United States." *Id.* § 1252(b)(9). The Supreme Court has explained that § 1252(b)(9) "makes clear that Congress understood the statutory term "questions of law and fact" to include the application of law to facts." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 230–31 (2020). Congress thus, in §§ 1252(a)(5) and (b)(9), provided noncitizens like Petitioner with a vehicle——in immigration proceedings and then in the court of appeals—to challenge how ICE seeks to apply the law to them.

In granting review to the courts of appeals in § 1252(b)(9), Congress specifically deprived *district courts* of jurisdiction to hear such challenges—even in habeas cases—of how the government is applying the law to the facts. Section 1252(b)(9) states,

"Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact." "Taken together, § 1252(a)(5) and § 1252(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) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction). The decisions at issue in Petitioner's removal proceedings are questions of law that can be presented to the immigration court, the BIA, and ultimately by the appropriate court of appeals.

Given these jurisdictional limits, district courts have determined that they cannot review decisions by immigration judges, as those decisions must be raised through the administrative avenues for appeal. For example, courts have found that "in general, district courts lack subject matter jurisdiction to review the denial of an adjustment of status application if there is a removal proceeding through which the plaintiff may seek relief." *Meza v. Cuccinelli*, 438 F. Supp. 3d 25, 32–33 (D.D.C. 2020), *aff'd sub nom. Meza v. Renaud*, 9 F.4th 930 (D.C. Cir. 2021) (collecting cases). Only after a final order of removal is issued or other final decision is made do the federal courts have

jurisdiction. *See Ahlijah v. Nielsen*, No. CV PX-17-1720, 2018 WL 3363875, at *3 (D. Md. July 10, 2018) ("Because [the plaintiff's] removal proceedings are ongoing in Immigration Court, [the plaintiff] has not yet been subject to a final decision as to deportation or removal."), *aff'd*, 755 F. App'x 290 (4th Cir. 2019). And the only court that can review the immigration judge's order is the court of appeals. *See* 8 U.S.C. § 1252(a)(5).

Section 1252(b)(9) thus bars Petitioner's attempt to ask this Court to exercise jurisdiction over his ongoing immigration proceedings. Petitioner has not shown that he lacks the ability to make arguments in his immigration court proceedings, and if he is unsuccessful, in the court of appeals. Petitioner has not shown that he will be unable to present his challenge in that manner. Indeed, he has not exhausted his available remedies below. That is, he does not indicate that he attempted to request a stay with the presiding immigration judge, much less appealed a denial of that stay to the BIA. For that reason, even if the Court had jurisdiction to implement a stay, Petitioner's request is premature.

Accordingly, the Court should find that it does not have jurisdiction to intervene in ongoing removal proceedings, and it should thus deny Petitioner's request for a TRO.

III. Petitioner has not shown that the relief he seeks in his TRO Motion is related to his habeas challenge to his detention.

A movant seeking preliminary or temporary injunctive relief in a lawsuit must demonstrate "a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint." *Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010) (internal quotations omitted). A movant cannot seek preliminary or temporary relief on a

matter outside the scope of the issues in his underlying lawsuit. *See, e.g., Hicks v. Jones*, 332 F. App'x 505, 508 (10th Cir. 2009) (the district court properly denied a motion for a preliminary injunction and temporary restraining order when the request for relief bore no relation to the merits of the inmate's deliberate indifference claim); *Stewart v. United States Immigration & Naturalization Service,* 762 F.2d 193, 198-99 (2d Cir. 1985) (the district court lacked jurisdiction to issue a preliminary injunction because the movant presented issues different from those alleged in the original complaint); *Alabama v. United States Army Corps of Engineers,* 424 F.3d 1117, 1134 (11th Cir. 2005) (injunctive relief must relate to the relief requested in the complaint).

Here, Petitioner has not shown how the relief he seeks in his motion is related to his habeas challenge to his detention. In his underlying petition, he argues that he should not be detained pursuant to 8 U.S.C. § 1225(b)(2)(A), and argues that the revocation of his bond denied him due process. *See* ECF No. 1 at 16. But in his TRO Motion, he asks to delay a hearing related to his ongoing removal proceedings, without explaining how that hearing before the immigration court will affect the challenges to his detention in this habeas proceeding. Those proceedings in immigration court will go forward regardless of whether Petitioner is detained. And Petitioner has a separate vehicle to challenge any final removal order, to the BIA and then the court of appeals. *See* 8 U.S.C. § 1252(b)(9).

IV. Petitioner has not demonstrated irreparable and imminent harm.

Lastly, Petitioner's Motion for a TRO should be denied for a third independent reason: he has not shown that the harm he contends he will suffer if the TRO is not entered is imminent and irreparable.

A court may enter such emergency injunctive relief only after the moving party proves "(1) that she's substantially likely to succeed on the merits, (2) that she'll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party's under the injunction, and (4) that the injunction isn't adverse to the public interest." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted). "To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted).

Petitioner has not demonstrated that absent an order staying the upcoming immigration court proceeding, he will suffer irreparable harm. He argues that if the immigration court proceeds with the hearing, he might be "removed or subjected to a final order," which he claims would "moot this case." ECF No. 10 at 2. But he fails to show how an order of removal would cause him irreparable harm related to his detention. First, he does not show that the hearing he seeks to vacate will result in a final order of removal, much less immediate deportation. Second, he does not show how such an immigration judge's decision would moot this case and, in doing so, cause him harm. Third, he has not shown that he would lack an avenue to seek review of a decision by the immigration judge ordering him removed. As explained above, were

such an order to result at the conclusion of his removal proceedings, Petitioner has a vehicle to appeal.

Accordingly, Petitioner has not demonstrated the sort of imminent harm need to demonstrate that he is entitled to injunctive relief.

CONCLUSION

For the reasons stated above, the Court should deny Petitioner's Motion for a TRO.

Dated: October 14, 2025

PETER MCNEILLY
United States Attorney

s/ Leslie Schulze
Leslie Schulze
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0131
Email: Leslie.schulze@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Skylar Madison Larson, Esq.
8275 East 11th Avenue
Suite 200176
Denver, CO 80220
skylarmlarsonesq@gmail.com

s/ Leslie Schulze
U.S. Attorney's Office