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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MILTON OBED CASTILLO-HERNANDEZ, Petitioner, v. PAMELA BONDI, in her official capacity as Attorney General, et al., Respondents.	No. 5:25-cv-02662 **FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 3]** **[Declaration of Demetrik Heard filed concurrently herewith]**

I. INTRODUCTION

Petitioner is a citizen of Guatemala who recently entered the United States and was apprehended shortly after he unlawfully crossed the border on or about August 4, 2024. Petitioner has been repeatedly removed from the United States back to Guatemala over the years, and he has then repeatedly returned, unlawfully. *See* Declaration of Dmitrik Heard (filed concurrently herewith).

Petitioner was arrested in Oregon on or about June 4, 2025, and he was then transferred for detention in the Adelanto facility for purposes of facilitating his removal. Prior to that arrest on June 4, Petitioner does not appear to have been detained during this most recent period of entry to the United States. In other words, his period of detention began on June 4, 2025, for his most recent removal order enforcement process (as opposed to his prior removals from the United States over the years). Furthermore, in June of 2025 his removal order was processed for reinstatement, and his Immigration Court case is scheduled for hearing on October 14, 2025. *See* Heard Decl., ¶¶ 12-14.

On October 8, 2025, however, Petitioner filed a habeas Petition [Dkt. 1]. On October 9, 2025, he filed an *ex parte* application for a temporary restraining order [Dkt. no. 3-1] (the "TRO Application") and its proposed TRO [Dkt. 3-2]. Petitioner primarily argues that he should not have been arrested because he believes his supervised release following his initial apprehension after crossing the border on August 4, 2024 should not have been revoked. As discussed below, however, he fails to meet his heavy burden to establish entitlement to the issuance of a TRO, and in particular to establish the government was not permitted to decide to detain him pursuant to his removal order. Moreover, as discussed in an order that the Hon. Judge Birotte Jr. recently issued, the remedy for such alleged regulatory violation would not inherently be immediate release. *See* Exhibit A, *Jose Angel Morales Sanchez v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB [Dkt. no. 12] (October 3, 2025 order denying TRO). Instead, the narrowly tailored remedy would be to rectify whatever aspect of the process was proven to be inadequate.

Accordingly, the TRO 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. Petitioner Has Not Shown That the Government Lacked Authority to Detain Him, That the Government Revoked His Release Improperly, And That the only Remedy for Such a Procedural Deficiency Would Be Ordering His Immediate Release from Detention

1. Petitioner Does Not Establish a *Zadvydas* Indefinite Detention Claim

Petitioner argues that he should be detained, despite conceding that he has a final removal order, and indeed has been repeatedly removed from the United States before following his various unlawful entries after deportation. But the INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231. When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Such detainees have due process protection; the Supreme Court has set forth the basic limitation, which is that after six months of post-removal order detention the burden then shifts to the government to show that removal is possible. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

Under *Zadvydas*, if a detained noncitizen is not removed within six months, the burden then shifts to the government to show it will remove them in a reasonably foreseeable time. Although that burden of persuasion shifts after six months, the noncitizen still "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*, 701. As noted above, the Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that "he is stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Here, the government is taking steps to remove Petitioner. After his most recent arrest on June 4, 2025, he was then processed on June 26, 2025 for reinstatement of his December 7, 2006 removal order. *See* Heard Decl., ¶¶ 12-13. On August 11, 2025, Petitioner was served with a Form I-863, Notice of Referral to Immigration Judge. While Petitioner argues that he has received a positive credible fear interview on August 22, 2025 relative to being removed to Guatemala, the Immigration Judge has scheduled his case for hearing for October 14, 2025. *Id.* ¶ 14. He is thus expected to be removed as expeditiously as possible as part of a detained removal proceeding.

Petitioner does not submit evidence establishing that he is stuck in an unremovable limbo. Indeed, he has been repeatedly removed from the United States to Guatemala before, and he also has travel documents to Guatemala. Courts properly deny *Zadvydas* claims under such circumstances and find that a "habeas petitioner's assertion as to the unforeseeability of removal, supported only by the mere passage of time, [is] insufficient to meet the petitioner's burden to demonstrate no significant likelihood of removal under the Supreme Court's holding in *Zadvydas*." *Muthalib v. Kelly*, 2017 WL 11696616, at *3 (C.D. Cal. Apr. 19, 2017) (collecting cases). "This is particularly so where the only impediment to removal is the issuance of the appropriate travel document." *Id. (citing Nasr v. Larocca*, 2016 WL 3710200 (C.D. Cal. June 1, 2016), *report and recommendation adopted,* 2016 WL 3704675 (C.D. Cal. July 11, 2016)). That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).

2. Petitioner Does Not Establish an Entitlement to Release Due to any Alleged Deficiencies in Supervised Release Revocation

Petitioner argues that there does not appear to be a good reason for his recent detention, given that he was previously under an order of supervision. But the government's authority to detain individuals previously released by ICE is discretionary, and it does not require the type of intensive threshold evidentiary procedure that Petitioner suggests. The government is allowed to revoke for nearly any reason. "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original). Of course the post-removal detention period remains limited by *Zadvydas* principles, so it is not unlimited, but the sufficiency of rationale for revocation is not subject to detailed interrogation and burden of proof via habeas petition.

The government is thus broadly authorized to exercise its discretion to revoke such release pursuant to 8 CFR § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

This point is particularly important in the context of arrest and detention pursuant to a *final removal order*, as opposed to the revocation of supervised release *during immigration proceedings pursuant to a notice to appear* [NTA]. When a removal order is issued, detention facilitates imminent removal pursuant to that order. Furthermore, there is a significant difference between (1) ICE's revocation (like here) of a prior decision by ICE to let an immigrant go on supervised release (rather than taking them into immediate detention), and (2) revocation of a decision by an Immigration Court to release an immigrant on bond.

Petitioner relies heavily on citing a series of unpublished District Court cases (*see* TRO Application, pp. 11-12) generally involving ICE's revocation of supervised release that had previously been granted by an Immigration Court during immigration proceedings—which is inapplicable here. Those decisions do not generally involve ICE's revocation, **during the removal order period**, of a prior release decision that had been **made by ICE itself** (and not by an Immigration Court). Petitioner does not appear to identify any appellate authority bearing on this subject. It is understandable why when a removal is not proximate because no removal order has yet been issued, a continuing liberty interest may be stronger, and it is likewise understandable when an Immigration Court had previously decided to release the immigrant on bond, that ICE's subsequent decision to revoke such prior release by an Immigration Court may be argued to require more procedural safeguards. But neither situation exists here. And as discussed above, the Ninth Circuit has noted the extensive discretionary authority that the regulations provide to the government in this context. *See Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009). By the statutory and regulatory language, that discretion is not limited merely to matters of considering flight risk or criminal danger, as Petitioner intimates, as if the government's authority to revoke supervised release were limited to the narrow subject of just revisiting a bond hearing. The law and the regulations do not constrain the government's authority to detain noncitizens pursuant to a final removal order in that manner; they instead would permit a broad range of considerations that might be applied (including, for example, the practical feasibility of a timely removal at the current time).

Perhaps equally important, the appropriate remedy for any such procedural deficiency in revocation process would not be automatic release from custody, in any event, but rather to remedy the specific procedural deficiency that might be established. Injunctive relief must be narrowly tailored to the wrong. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) ("And we note that even when there are deficiencies in individual § 1226(a) proceedings, they may be redressable through means short of major changes to the burden of proof.").

Other District Courts have correctly applied this point of remedy law. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited redetention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

Here, Petitioner suggests there must be some sort of detailed evidentiary proceeding before the government may re-detain him under the relevant regulatory provisions, and any allegedly lacking aspect of revocation procedure or documentation means he should be immediately released. But that demand is not consistent with the relatively limited nature of the regulatory provisions at issue, nor with the Ninth Circuit authority quoted above construing the government's authority to revoke release.

The Hon. Judge Blumenfeld recently denied a preliminary injunction motion in a somewhat similar case alleging a lack of sufficient release revocation process, noting that the evidentiary burden and had not been met, and also that it was unclear that release would be the appropriate remedy for any violations of revocation procedure. *See Long Ton v. Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [Dkt. no. 17] (September 3, 2025) (Order Denying Application for Preliminary Injunction). The burden is on the moving party to show that ordering release via a TRO would be narrowly tailored to rectifying a deficiency that was proven under the heavy standard for preliminary injunctive relief. Speculating that the revocation of release process was not fully satisfactory in all possible respects and all documents is insufficient to carry that burden. Nor are complaints by Petitioner's counsel that he had not gotten full answers to his satisfaction on every aspect of the revocation process.

In sum, the TRO Application fails to establish violations of release revocation procedure; if it had, it also would not warrant ordering Petitioner's release via a TRO.

B. 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

Respondents respectfully request that Petitioner's TRO Application be denied.

Dated: October 10, 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: October 10, 2025

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