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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SAUL PANUELAS GUTIERREZ,

Petitioner,

v.

KRISTI NOEM, Secretary, Department of Homeland Security, et al.,

Respondents.

No. 5:25-cv-02668-DOC-RAO

FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 4]

Honorable David O. Carter
United States District Judge

I. INTRODUCTION

Petitioner is an immigrant convicted of second-degree murder, but with his charges later being revised down to 18 years in prison, which he was released from in 2022. After he being arrested by ICE on October 9, 2025, he seeks two categories of relief by his *ex parte* application for a temporary restraining order [Dkt. no. 4] (the "TRO Application") and its proposed TRO [Dkt. 4-2]. He fails to meet his heavy burden to establish entitlement to the issuance of a TRO on either category of requested relief.

First, Petitioner asks the Court to order the Respondents not to transfer Petitioner outside this judicial district. The asserted basis for that request is not specified in his TRO Application, however, and it is contrary to applicable law, as discussed below. The Hon. Judge Staton recently denied a similar request for such relief, explaining why it does not meet the TRO standard in an immigration detention habeas petition case. *See* Exhibit A hereto, *Omar Sanchez Ruiz v. Warden*, 5:25-cv-02486-JLS-AJR, Dkt. 8 (September 23, 2025 order granting in part and denying in part application for TRO).

Second, Petitioner asks that the Respondents be ordered to immediately release him, granting him by TRO the ultimate relief his habeas petition seeks. Petitioner claims this is required because he cannot be timely removed, and because the government did not properly revoke his order of supervised release (OSUP). There are multiple problems with that claim, however, starting with the fact that Petitioner filed his TRO Application *the same day* that he was arrested, October 9, 2025, and he did not submit evidence carrying his burden to establish improper revocation procedure with his moving papers.

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 B, *Jose Angel Morales Sanchez v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB [Dkt. no. 12] (October 3, 2025 order denying TRO). The narrowly tailored remedy would be to rectify whatever aspect of the process was proven to be inadequate.

Finally, Petitioner asserts that he is being subjected to indefinite detention because he was previously detained until he was granted deferment of removal to Mexico, but he does thereby establish that "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). 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, Petitioner was granted deferment of removal to Mexico, his home country. But the government is now taking steps to remove him to a third country, and such removals are authorized pursuant to 8 U.S.C. § 1231(b)(2)(E)(vii), which permits (subject to notice requirements) removing a noncitizen to any "country whose government will accept the alien into that country."

In sum, Petitioner has failed to establish entitlement to the extraordinary remedy of a TRO, and his 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. 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 to a third country. That process has just begun, relative to his arrest yesterday, October 9, 2025. Petitioner does not submit evidence that it is unlikely to result in his timely removal. 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 also 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.").

Petitioner vaguely suggests that he might prove that his re-detention does not meet an unspecified standard. *See* TRO Application at p. 7. But he does not submit any evidence of that, nor could he have, because he almost instantaneously filed his TRO Application on the same day he was arrested. 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*. Petitioner relies heavily on unpublished cases addressing the latter scenario, which is inapplicable.

Perhaps equally important, the appropriate remedy for any such procedural deficiency would not be automatic release from custody, 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 Request for a Bar on District Transfer is Defective

Petitioner also asks that a TRO bar any potential transfer to any other judicial districts, but his request lacks legal merit and fails to establish irreparable harm.

1. The law and facts do not clearly favor Petitioner

The government may detain aliens pending their removal pursuant to a removal order. Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain aliens. The INA precludes review of "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General . . . ." 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain Petitioner. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction).

In *Van Dinh*, the noncitizen-plaintiffs were incarcerated at a facility in Colorado, where they were notified of the "distinct possibility" that they would be transferred to another facility. *See* 197 F.3d at 429. Plaintiffs filed a Bivens class action complaint requesting injunctive relief restraining all noncitizen transfers until local counsel had an opportunity to interview their clients and injunctive relief restraining transfer outside the area of those noncitizens with an established attorney-client relationship. *See id.* There, the Tenth Circuit concluded that "the district court had no jurisdiction to review the Attorney General's discretionary decision to transfer and detain appellants in another INS facility under § 1252(a)(2)(B)(ii)" and thus no Bivens class action was available. *Id.* at 435. In reaching this conclusion, the Court found that "[t]he Attorney General is mandated to 'arrange for appropriate places of detention for [noncitizens] detained pending removal.'" *Id.* at 433 (citing 8 U.S.C. § 1231(g)(1)). "The Attorney General's discretionary power to transfer [noncitizens] from one locale to another, as [he or] she deems appropriate, arises from this language." *Id.* Thus, it is "apparent that a district court has no jurisdiction to restrain the Attorney General's power to transfer [noncitizens] to appropriate facilities by granting injunctive relief in a Bivens class action suit." *Id.*

Moreover, in *Rios–Berrios*, the petitioner was apprehended in California, charged with entry without inspection, and moved to Florida for a deportation hearing that was scheduled to begin effectively five working days from the time of his apprehension. *See* 776 F.2d at 860-61. The immigration judge twice continued the hearing for a total of two working days, first after the petitioner stated that he needed time to find an attorney and again after being informed that the petitioner had called a friend who had been in contact with an attorney and bail bondsman. *See id.* After the immigration judge granted the continuances, he also advised that the hearing would proceed with or without counsel. *See id.* When the petitioner appeared without counsel, there was no inquiry regarding the petitioner's expressed wish to be represented by counsel and the hearing went forward. *See id.* The Ninth Circuit found a violation of the petitioner's right to be represented by counsel of his own choice at his own expense. *See id.* at 862-63. However, the Ninth Circuit clarified that there was no right to block his transfer to another district:

> We wish to make ourselves clear. We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide. We merely say that his transfer there, combined with the unexplained haste in beginning deportation proceedings, combined with the fact of petitioner's incarceration, his inability to speak English, and his lack of friends in this country, demanded more than lip service to the right of counsel declared in statute and agency regulations, a right obviously intended for the benefit of aliens in petitioner's position.

Id. at 863 (citations omitted). Accordingly, judicial intervention is not proper with respect to the government's decision about where to detain Petitioner.

2. Petitioner also fails to show that he will likely suffer serious irreparable harm by being transferred to another district.

Petitioner also has not demonstrated that he will suffer irreparable injury if he is transferred to another district while detained. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22.

As a threshold matter, if this Court had jurisdiction when the Petition was filed, then axiomatically any later transfer to another district within the United States would not end that jurisdiction. A writ of habeas corpus operates not upon the prisoner, but upon the prisoner's custodian. *See Braden v. 30th Jud. Circuit Ct. of Kentucky*, 410 U.S. 484, 494–495 (1973). Jurisdiction over a § 2241 petition attaches when a petitioner files a petition in his district of confinement and names his custodian. *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change."). *See, e.g., Acosta v. Doerer*, No. 5:24-cv-01630-SPG-SSC, 2024 WL 4800878, at *4 (C.D. Cal. Oct. 24, 2024) (holding that the district court maintained jurisdiction even after immigration detainee petitioner was transferred from one federal facility to another); *Rincon-Corrales v. Noem*, No. 2:25-cv-00801-APG-DJA, 2025 WL 1342851, at *2 (D. Nev. May 8, 2025) ("[O]nce a petitioner has properly filed a habeas petition in the district of confinement, any subsequent transfer does not strip the filing district of habeas jurisdiction.").

In sum, Petitioner fails to establish any specific serious and irreparable harm that would arise from his potentially being detained in any other district versus being detained in the Central District of California.

Finally, the requested TRO is also not narrowly tailored on this point. For example, detention in the Southern District of California, i.e. San Diego, would patently not be an "irreparable harm" relative to detention at Adelanto within the Central District of California. Nor would detention in the Northern District of California, the Eastern District of California, etcetera. Yet the order sought here (and stated in the proposed TRO Order) would bar any transfer outside the Central District. The effect is to essentially confer upon an immigration detainee a "veto right" against any non-preferred detention location, in contravention of law. That is inconsistent with the high legal standard for issuing preliminary exigent relief.

Accordingly, Petitioner's request for a TRO barring his transfer to other Districts should be denied.

C. 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.

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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 3,396 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 10, 2025

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