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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Saul PANUELAS GUTIERREZ,
14 Petitioner,

15 v.

16 Kristi NOEM, Secretary, Department
17 of Homeland Security; Todd LYONS,
18 in his official capacity as Acting
19 Director of U.S. Immigration and
20 Customs Enforcement; Pam BONDI,
21 Attorney General of the United States;
22 and David GOMEZ, Field Office
23 Director, San Bernardino ICE Field
24 Office.

25 Respondents.
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27
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No. 5:25-cv-02668-DOC-RAO

PETITIONER'S REPLY TO *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

1 Petitioner Saul Panuelas Gutierrez hereby replies to Respondents'
2 Opposition to his *Ex Parte* Application for Temporary Restraining Order. Notably,
3 Respondents make no argument at all that Petitioner is not likely to prevail on his
4 challenge to the third country removal without notice and an opportunity to
5 respond. As such, the application should be granted on that provision, at a
6 minimum. The main dispute between the parties is regarding the legality of
7 Petitioner's re-detention and his request to stop transfer outside of this district of he
8 is to remain detained. Petitioner addresses each issue in turn.

9 A. PETITIONER IS LIKELY TO PREVAIL IN THE CHALLENGE TO
10 THE LEGALITY OF HIS RE-DETENTION

11 First, Petitioner establishes that he cannot be re-detained absent a showing
12 from the government that circumstances have changed and that his removal is
13 reasonably foreseeable. The government's failure to make such a showing is a
14 violation of 8 U.S.C. § 1231(a)(6), *Zadvydas v. Davis*, 533 U.S. 678 (2001), 8
15 C.F.R. § 241.13(i), and 8 C.F.R. § 241.4(l). Petitioner has already spent more than
16 six months in custody pursuant to a final order of removal. The government cannot
17 just hold him another six months to seek that removal when he has already spent an
18 excess of six months in detention. *Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025
19 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025) ("Imposing the burden of proof on the
20 alien each time he is re-detained would lead to an unjust result and serious due
21 process implications."); *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D.
22 Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable
23 where alien is "re-detained" after having been on supervised release and that
24 respondents failed to meet their burden to show a substantial likelihood of removal
25 is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL
26 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed
27 while petitioner was on supervised release and it is respondent's burden to show
28

1 removal is now likely in the reasonably foreseeable future). Hence, it is not
2 Petitioner who must show that he cannot be removed, it is Respondents who must
3 show that the government is able to remove Petitioner. But it also may not detain
4 Petitioner until it meets such a showing.

5
6 Second, Respondents cannot meet such a burden to legally detain Petitioner.
7 Respondents concede that the government had not taken *any* steps to initiate
8 Petitioner's removal to a third country until he was taken into custody on October
9 9, 2025. Dkt # 6 at 3. *Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL
10 2871914, at *2 (E.D. Tex. Oct. 9, 2025) ("the Court finds Respondents have failed
11 to meet their burden. Thus far, Respondents have only made conclusory statements
12 via written declarations that they are taking steps to remove Petitioner to Iran.").
13 "A remote possibility of an eventual removal is not analogous to a significant
14 likelihood that removal will occur in the reasonably foreseeable future." *Kane v.*
15 *Mukasey*, No. CV B-08-037, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21,
16 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report
17 and recommendation was entered denying the petition as moot because petitioner
18 was deported prior to the order adopting), *R & R adopted*, 2008 WL 11393148
19 (S.D. Tex. Oct. 7, 2008). The detention of Petitioner while engaging in a fishing
20 expedition to locate a third country of removal is unlawful.

21 Third, contrary to Respondents' position, there are in fact legal impediments
22 to re-detention after a noncitizen has been released on an order of supervision.
23 Both 8 C.F.R. § 241.13(i) and § 241.4(l) provide such frameworks for when an
24 order of release can be revoked. *Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025
25 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025); *Roble v. Bondi*, No. 25-CV-3196
26 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Nguyen v. Scott*,
27 No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025); *Sied*
28 *v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19,

1 2018).

2
3 Further, the remedy for violations of these required procedures is release
4 from custody until there has been such a showing of changed circumstances.
5 *Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL 2871914, at *3 (E.D. Tex.
6 Oct. 9, 2025 (“Respondents are ORDERED to release Petitioner subject to an order
7 of supervision in accordance with 8 C.F.R. § 241.5.”); *Nguyen v. Hyde*, No. 25-
8 CV-11470-MJJ, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025) (“Petitioner is
9 to be released from detention immediately pursuant to the conditions in his
10 preexisting Order of Supervision”).

11
12 B. THE COURT HAS THE AUTHORITY TO STOP TRANSFER IF IT
13 DECLINES TO IMMEDIATELY RELEASE PETITIONER

14 Next, Respondents dispute that the Court has the authority to stop transfer
15 outside of this district. This is only relevant if the Court requires that Petitioner
16 remain in custody and, as discussed above, Petitioner believes that release is
17 required based on the detention statute and regulations. Despite these successful
18 arguments, much of Respondents’ objections are with the part of Petitioner’s
19 application that requests the Court to stop transfer if Petitioner is continued to be
20 detained. If the Court is to consider this issue, there are no jurisdictional hurdles to
21 enjoining transfer while the merits of the case are being considered.

22 First, 8 U.S.C. § 1231(g)(1) states “[t]he Attorney General shall arrange for
23 appropriate places of detention for aliens detained pending removal or a decision
24 on removal.” Petitioner does not dispute that there is such authority. But this is a
25 situation where Petitioner was arrested in violation of due process and the
26 regulations. This Court has the inherent authority to require that if he is to remain
27 detained, Petitioner remain within this judicial district to answer to this Court.
28

1 Respondents also argue that 8 U.S.C. § 1252(g) bars this Court from issuing relief.

2 That section states:

3 (g) Exclusive jurisdiction

4
5 Except as provided in this section and notwithstanding any other provision
6 of law (statutory or nonstatutory), including section 2241 of Title 28, or any
7 other habeas corpus provision, and sections 1361 and 1651 of such title, no
8 court shall have jurisdiction to hear any cause or claim by or on behalf of
9 any alien arising from the decision or action by the Attorney General to
commence proceedings, adjudicate cases, or execute removal orders against
any alien under this chapter.

10 Section 1252(g)'s bar on jurisdiction is "narrow[]." *Reno v. Am.-Arab Anti-*
11 *Discrimination Comm. ("AADC")*, 525 U.S. 471, 482, 119 S.Ct. 936, 142 L.Ed.2d
12 940 (1999). Section 1252(g) is directed "against a particular evil: attempts to
13 impose judicial constraints upon prosecutorial discretion." *AADC*, 525 U.S. at 485
14 n.9, 119 S.Ct. 936. This bar on judicial review is thus cabined "to three discrete
15 actions": a decision "to 'commence proceedings, adjudicate cases, or execute
16 removal orders.' " *Id.* at 482, 119 S.Ct. 936 (quoting 8 U.S.C. § 1252(g))
17 (emphases adopted). There are "many other decisions or actions that may be part
18 of the deportation process" but that do not fall within the three discrete exercises of
19 "prosecutorial discretion" covered by § 1252(g). *Id.* at 482, 489, 119 S.Ct. 936.
20 Section 1252(g) does not apply to transfer. *Ozturk v. Hyde*, 136 F.4th 382, 396–97
21 (2d Cir. 2025). Nor does § 1252(g) apply to detention claims. *Jennings v.*
22 *Rodriguez*, 583 U.S. 281, 294, 138 S. Ct. 830, 841, 200 L. Ed. 2d 122 (2018);
23 *Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 2497, 150 L. Ed. 2d 653
24 (2001).

25 Respondents also rely on 8 U.S.C. § 1252(a)(2)(B)(ii). But that section only
26 applies when Congress has explicitly provided for discretionary authority in the
27 statute. *Kucana v. Holder*, 558 U.S. 233, 248, 130 S. Ct. 827, 837, 175 L. Ed. 2d
28

1 694 (2010). No such explicit discretionary language is used in 8 U.S.C. §
2 1231(g)(1) and, therefore, § 1252(a)(2)(B)(ii) does not apply.

3 Petitioner's family and attorney are located in this district, as is this Court.
4 Respondents have not identified any reason to transfer Petitioners outside of this
5 district. Hence, if Petitioner is to remain detained, an injunction is warranted.
6

7 C. THE OTHER REQUIREMENTS FOR AN INJUNCTION HAVE BEEN
8 MET

9 Last, the other requirements for the entry of an injunction have been met.
10 Respondents do not dispute that Petitioner's detention implicates his liberty
11 interest and meets the irreparable harm standard for an injunction. Respondents do
12 not assert that there is any hardship to the government in releasing Petitioner or in
13 providing notice of any third country removal. Rather, their only objection is
14 regarding transfer in the event that Petitioner is to be detained. But Respondents do
15 not assert that there is any hardship to the government in continuing Petitioner's
16 detention within this district. Conversely, Petitioners' counsel is in this judicial
17 district, as is his family, and this Court. In the event that Petitioner is continued to
18 be detained, he should be kept in this district.
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20 Dated: October 12, 2025

Respectfully Submitted,

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Counsel for Petitioner

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains
1475 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin
Stacy Tolchin
Counsel for Petitioner