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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

H-L-P-F,

Petitioner,

v.

LAURA HERMOSILLO;[1] TODD LYONS; KRISTI NOEM; PAMELA BONDI; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No.: 6:25-cv-01899-AA

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner H-L-P-F, a native and citizen of Venezuela, is an arriving alien who applied for admission at the San Ysidro Port of Entry on August 1, 2024. He

[1] Laura Hermosillo is substituted for Cammilla Wamsley pursuant to Federal Rule of Civil Procedure 25(d).

was charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and issued a Notice to Appear. He was then granted parole and released on an Order of Recognizance. Declaration of Jason Weiss (ECF 7, "Weiss Decl.,") ¶ 4.

In February 2025, after Petitioner changed his address without notifying and securing written permission from Immigration and Customs Enforcement ("ICE"), he was warned that if he changes his residence again without receiving proper approval, ICE would re-detain him. *Id.* ¶ 8.

At approximately 5 a.m. on October 15, 2025, during the execution of a search warrant for unlawful firearms, ICE officers found Petitioner at the target address despite that not being his residence of record with ICE. The officers determined Petitioner had again changed his residence without approval and took him back into custody. *Id.* ¶¶ 11–12.

That same day, Petitioner filed this habeas action seeking his immediate release. ECF 1. On October 20, 2025, Respondents filed their response to the petition. ECF 6.

Petitioner now moves for a temporary restraining order seeking his immediate release, as well as additional relief including an order that Respondents "never anywhere disclose [Petitioner's] name and personal identifying information in any … documents during and after this habeas action" and "to allow Petitioner['s] immigration counsel to accompany him to any future immigration matters." ECF 9 at 15–16. An evidentiary hearing is set for November 14, 2025. ECF 10.

The Court should deny the motion for a temporary restraining order seeking immediate release. The motion does not seek to preserve the status quo but instead reaches the ultimate relief sought in the petition. Yet Petitioner fails to meet the "doubly demanding" burden for such relief on an expedited basis. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

Nor can Plaintiff meet the already high standard for a temporary restraining order, as he has not shown a likelihood of success on the merits or irreparable harm absent immediate release. Nor has he otherwise shown the equities and public interest favor his immediate release prior to the entry of judgment.

LEGAL STANDARD

The standards for a temporary restraining order and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

A preliminary injunction is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). "To obtain a preliminary injunction, a plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (en banc) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). To carry its burden of persuasion, the moving party must make a "clear showing" on each of the four

required elements. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

A preliminary injunction can take two forms. "A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir. 2009) (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir.1988)). A mandatory injunction "orders a responsible party to 'take action.'" *Id.*

Because Petitioner seeks a mandatory injunction, his burden is "doubly demanding." *Garcia*, 786 F.3d at 740. To succeed, Petitioner "must establish that the law and facts clearly favor" his position, "not simply that [he] is likely to succeed." *Id.* (emphasis in original). Further, a mandatory injunction "is particularly disfavored" and may not be granted "unless extreme or very serious damage will result." *Marlyn Nutraceuticals*, 571 F.3d at 879 (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)).

ARGUMENT

A. Petitioner Improperly Seeks Full Relief via a Temporary Restraining Order

Petitioner's habeas petition seeks immediate release. Pet. (ECF 1) at 19. By seeking the same relief in his motion for a temporary restraining order, Petitioner does not merely seek to preserve the status quo pending a ruling on the merits of his habeas petition. He seeks, through emergency equity, for the Court to alter the

status quo and grant him the ultimate relief he seeks before adjudication of the petition.

"[J]udgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits."). And Petitioner's showing in support of a mandatory injunction falls short of carrying his "doubly demanding" burden to "establish that the law and facts clearly favor" such extreme relief. *Garcia*, 786 F.3d at 740. Indeed, the motion does not even argue the facts "clearly favor" Petitioner but only that he is "likely to succeed." Mot. (ECF 9) at 11. This is not enough to obtain the ultimate relief he seeks on a preliminary basis. The Court should accordingly deny the request for a temporary restraining seeking immediate release. *See, e.g.*, *Tang v. Bondi*, No. 2:25-cv-01473-RAJ-TLF, 2025 WL 2979938, at *2 (W.D. Wash. Sept. 3, 2025) (finding TRO was "not the appropriate vehicle to adjudicate [petitioner's] request for immediate release from custody"); *Mendez v. USCIS*, No. 23-cv-00829-TLT, 2023 WL 2604585, at *3 (N.D. Cal. Mar. 15, 2023) (denying motion for a temporary restraining order seeking "the same relief" sought in the complaint).

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B. Even if Viewed as Prohibitory, Plaintiff Fails to Meet the Requirements for a Preliminary Injunction

1. No likelihood of success on the merits

Petitioner does not argue that Respondents could not re-detain him for failing to obtain written permission to change his address multiple times or that they acted irrationally in doing so. Instead, he argues that he was not residing at the warrant address at the time he was found there on October 15, 2025. In support, he provides a declaration stating he did not reside at the warrant address – [redacted] – but rather at his address of record with ICE – [redacted] in the same complex. Pet.'s Decl. (ECF 8-3) ¶ 6. He also provides a declaration from a person who lives next to Apt. #131, stating that Petitioner lives in [redacted] Declaration of Sheryl Bowie ("Bowie Decl.") ¶ 8. Petitioner's submitted evidence fails to show a likelihood of success on his claim that ICE detaining him for changing his residence without authorization is arbitrary and capricious in violation of the Administrative Procedure Act ("APA"), *see* Pet. ¶ 67, and irrational in violation of the Due Process Clause of the Fifth Amendment, *see id.* ¶ 79.

While the parties dispute whether Petitioner admitted that he lives at and pays rent for the warrant address,[2] the evidence still supports ICE's decision to re-detain Petitioner. Congress gave the Executive discretion to revoke conditional release. 8 U.S.C. § 1226(b) ("The Attorney General at any time may revoke a bond

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[2] *Cf.* Pet.'s Decl. ¶ 16 ("[ICE officers] asked me if I lived at the apartment where I had been detained, and I said no.") *with* Weiss Decl. ¶ 11 ("During the execution of this warrant, I encountered the Petitioner who admitted to me that he pays rent and currently resides at the warrant address ....").

or parole ...."); *see also* 8 C.F.R. § 236.1(c)(9) ("When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director ....").

ICE reasonably exercised that discretion in this case. Petitioner does not dispute that he previously changed his residence in violation of the conditions of his release and was warned that this violation is grounds for him to be detained. *See* Weiss Decl. ¶ 8. After this happened, the Federal Bureau of Investigation ("FBI") provided ICE surveillance information that Petitioner was at the warrant address daily from October 6 through October 15, except for a 36-hour window where information is missing due to the surveillance camera not being operational. Ex. A; *see also* Supplemental Declaration of Jason Weiss ("Supp. Weiss Decl.") ¶ 6. Based on this surveillance, ICE officers were informed and expected Petitioner to be at the warrant address when the warrant was executed in the early morning hours on October 15, 2025. *Id.* ¶ 5.

When the ICE officers found Petitioner at the warrant address, ICE Supervisory Detention and Deportation Officer Weiss interviewed Petitioner in Spanish. Officer Weiss is fluent in Spanish. *Id.* ¶ 4. During the interview, Petitioner admitted to residing at and paying rent for the warrant address, and Petitioner said that he has his own bedroom in the apartment. *Id.* ¶ 13.[3] Deportation Officer Michele O'Brien, communicating through Officer Weiss, asked

[3] FBI also found bank statements, insurance documentation, and similar sensitive documentation belonging to Petitioner at the warrant address. *See* Ex. B.

Petitioner where his clothes were. Petitioner told Officer Weiss they were in his bedroom. Declaration of Michele O'Brien ("O'Brien Decl.") ¶ 5; Supp. Weiss Decl. ¶ 13. Consistent with Petitioner's instructions, Officer O'Brien retrieved Petitioner's pants, shoes, and sweater from the bedroom. O'Brien Decl. ¶¶ 6–8.

Given this record, Petitioner has failed to show that ICE's exercise of its discretion in determining to revoke Petitioner's release was arbitrary, capricious, or irrational. *See, e.g.*, *Tri-Valley CAREs v. U.S. Dept. of Energy*, 671 F.3d 1113, 1124 (9th Cir. 2012) (holding the government only violates the arbitrary and capricious standard "when the record plainly demonstrates that [the agency] made a clear error in judgment"); *Friends of the Earth v. Hintz*, 800 F.2d 822, 831 (9th Cir. 1986) ("The court may not set aside agency action as arbitrary or capricious unless there is no rational basis for the action.").

Nor has Petitioner shown that Assistant Field Office Director ("AFOD") Jeff Chan lacked authority to effectuate that revocation. Section 236.1(c)(9) of 8 C.F.R. specifies that the "assistant *district director* for detention and deportation" has such authority. (emphasis added). The definition of "district director" includes "field office director." *See* 8 C.F.R. § 1.2. And AFOD Chan's responsibilities, as the AFOD, specifically include detention and removal of aliens who violate immigration law. *See* Declaration of Jeff Chan ¶ 3. Accordingly, AFOD Chan – as an assistant field office director for detention and deportation – falls within the ambit of officers authorized to revoke release.

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2. No showing of irreparable harm

To obtain a temporary restraining order, Petitioner "must establish" that he is "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. To do so, he must make a "showing on the facts" of the case and cannot rely on unsubstantiated argument and presumption. *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 998 (9th Cir. 2011); *see also Ovitsky v. Oregon*, No. 3:12-cv-02250-AA, 2013 WL 5253162, at *3 (D. Or. Sept. 16, 2013) (denying relief where plaintiff did not provide evidence of irreparable harm).

Petitioner makes no showing of irreparable harm on the facts of this case. He argues that he will be harmed by his detention, but this does not satisfy the inquiry for mandatory injunctive relief. It only "begs the constitutional questions presented in his petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-cv-754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *Resendiz v. Holder*, No. 12-cv-4850-WHA, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). "[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm[.]" *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

3. The equities and public interest disfavor preliminary relief

The balance of equities and public interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The

Court "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). And "the public interest in enforcement of the immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981); *see also United States v. Martinez-Fuerte*, 428 U.S. 543, 551–58 (1976); *Nken*, 556 U.S. at 436 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted).

Petitioner's requested relief, release from custody prior to the entry of judgment, would undermine the Executive Branch's constitutional and statutory authority over immigration and the removal of noncitizens, a severe intrusion into the core Executive function of managing the immigration system. *Arizona v. U.S.*, 567 U.S. 387, 394–96 (2012). The public interest thus weighs in favor of denying the motion.

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CONCLUSION

The Court should deny Petitioner's motion for a temporary restraining order.

Respectfully submitted this 13th day of November, 2025.

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/s/ Patrick J. Conti
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