IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03268-PAB-NRN

FIDEL A. PENA-GIL,

Petitioner,

v.

TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;
ROBERT GUADIAN, Field Director of the Denver Field Office; and
WARDEN, Aurora Contract Detention Facility,

Respondents.

RESPONDENTS' RESPONSE TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION (ECF No. 7)

Pursuant to the Court's October 23, 2025 Order, ECF No. 9, Respondents respond to Petitioner Fidel A. Pena-Gil's motion for a preliminary injunction ("PI Motion"), ECF No. 7 (filed October 22, 2025). The PI Motion seeks an order from the Court precluding Respondents from transferring Petitioner out of the District of Colorado pending the resolution of his Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition"), ECF No. 1. ECF No. 7 at 1.

The Court should deny the PI Motion. Petitioner has not established that he is likely to succeed on the merits of his claim. He has not shown that the Court has authority, in a habeas proceeding, to determine Petitioner's place of confinement. Petitioner also has not established that he will face irreparable harm absent an

injunction. And the public interest in prompt enforcement of federal immigration law weighs in favor of Respondents.

BACKGROUND

I. Factual Background

Petitioner is a native and citizen of Cuba. Ex. A ¶ 4 (Decl. of Rosa Escareno). On May 14, 1980, he came to the United States as part of the Mariel Boatlift and was paroled into the United States at that time. *Id.* ¶ 5. In 1987, while in the United States, he was convicted of providing a false statement in the acquisition of a firearm. *Id.* ¶ 6. That same year, Petitioner was placed in deportation and exclusion proceedings.[1] *Id.* ¶ 7. An immigration judge ordered Petitioner excluded and deported from the United States on January 9, 1989. *Id.* ¶ 8. Thus, Petitioner is subject to a final order of deportation. *Id.* ¶ 9.

ICE did not execute the deportation of Petitioner at that time. *Id.* ¶ 10. Petitioner was released from custody on an order of supervision on September 28, 1990. *Id.* On June 12, 2025, after reviewing Petitioner's case, ICE determined that circumstances had changed such that it was now practicable to pursue his deportation from the United

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[1] Prior to the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, immigration terminology in the Immigration and Nationality Act was different. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 391 n.1 (6th Cir. 2003). "[E]xcludable aliens . . . were ineligible for admission or entry into the United States" and were subject to exclusion proceedings, in contrast to deportation proceedings, which "were brought against those aliens who had gained admission into the country." *Id.* (quotations omitted). Post-IIRIRA, aliens who had previously been subject to exclusion proceedings or deportation proceedings are now all subject to removal proceedings. *Id.*

States and nominated him for deportation. *Id.* ¶ 11. ICE notified Petitioner that it was revoking the order of supervision and would detain him pending his deportation. *Id.*

More recently, ICE has taken steps to effectuate Petitioner's removal, but those steps have not yet been successful. On July 9, 2025, ICE informed Petitioner that he would be removed under 8 U.S.C. § 1231(b) to Mexico, a "third country" (other than his country of origin). *Id.* ¶ 12. He was transferred from the ICE contract detention facility in Aurora, Colorado ("Denver CDF") to a staging facility in El Paso, Texas, in anticipation of the removal to Mexico. *Id.* ¶ 13. However, his removal to Mexico was cancelled, and ICE transferred him back to the Denver CDF the next day. *Id.* Then, on August 28, 2025, ICE transferred Petitioner to a staging facility in Florence, Arizona, for anticipated removal to Mexico. *Id.* ¶ 14. This removal was cancelled, and he was transported back to the Denver CDF on August 31, 2025. *Id.*

On October 15, 2025, ICE conducted a Post Order Custody Review ("POCR") for Petitioner under 8 C.F.R. § 241.4. *Id.* ¶ 16. ICE determined that Petitioner had failed to demonstrate that he would not pose a significant flight risk and danger to the community, and ICE continued to detain Petitioner pending his deportation from the United States. *Id.* Petitioner requested a personal interview as part of the POCR process, and ICE is in the process of scheduling that interview. *Id.* ¶ 17. During that interview, Petitioner will be given the opportunity to provide any additional information in support of his release from custody. *Id.* ICE is also in the process of scheduling him for parole review under 8 C.F.R. § 212.12, a provision that governs the evaluation of parole for Mariel Cubans. *Id.* ¶ 18.

ICE continues to pursue Petitioner's deportation from the United States. *Id.* ¶ 19. ICE has nominated Petitioner for deportation to Cuba and has pursued that process through the Cuban government. *Id.* ¶ 15. This process is still pending adjudication. *Id.*

II. The Petition and the PI Motion

Petitioner filed this habeas proceeding in the District of Colorado on October 16, 2025, claiming that his current detention is unlawful. ECF No. 1 at 3. He challenges his detention on the grounds that it violates the Immigration and Nationality Act ("INA"), relevant regulations, and his substantive and procedural due process rights. *Id.* at 10–16. He seeks an emergency order staying his transfer outside the District of Colorado and his removal from the United States; a declaration that his detention violates the regulations, the INA, and the Due Process Clause of the Fifteenth Amendment; an order declaring Petitioner's release from custody; and an order precluding Respondents from removing Petitioner to a third country without following proper procedures. *Id.* at 16–17.

On October 22, 2025, Petitioner filed a Motion for Issuance of an Order to Show Cause and for a Preliminary Injunction, seeking the issuance of an order to show cause directing Respondents to respond to the Petitioner and an order precluding Respondents from transferring out of the jurisdiction pending resolution of this habeas proceeding. ECF No. 7; *see also* ECF No. 8 (brief in support of motion).

On October 23, 2025, the Court ordered Respondents to show cause by November 3, 2025, why the Petition should not be granted and further ordered Respondents to respond to the PI Motion. ECF No. 9.

ARGUMENT

I. Legal Standard

In the PI Motion, Petitioner seeks emergency injunctive relief in the form of a preliminary injunction. ECF No. 8 at 1, 3–5; *see* Fed. R. Civ. P. 65. A court may enter a preliminary injunction 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) (quotation omitted). A request for a preliminary injunction is "an extraordinary remedy." *Id.* (quotation omitted). Thus, "the right to relief must be clear and unequivocal." *Beltronics USA, Inc. v. Midwest Inventory Distrib., LLC*, 562 F.3d 1067, 1070 (10th Cir. 2009) (quotation omitted).

II. Petitioner has not established that he is likely to succeed on his request not to be transferred outside the District of Colorado.

Petitioner does not identify legal authority allowing the Court to issue an order prohibiting Respondents from transferring Petitioner to another facility in the context of a habeas petition. Traditionally, habeas has "been a means to secure *release* from unlawful detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (emphasis in original). Petitioner's request that the Court order that he not be transferred does not fall within the traditional scope of habeas relief.

Petitioner cites four recent habeas cases where courts in this district have issued orders requiring immigration detainees not to be removed from the district. *See* ECF

No. 8 at 3 (citing *Arostegui-Maldonado v. Baltazar*, -- F. Supp. 3d --, 2025 WL 2280357 (D. Colo. Aug. 8, 2025); *Batooie v. Ceja*, No. 25-cv-02059-DDD-STV, 2025 WL 1836695 (D. Colo. July 3, 2025); *D.B.U. v. Trump*, No. 1:25-cv-01163-CNS, 2025 WL 1106556 (D. Colo. Apr. 14, 2025); *Vizguerra-Ramirez v. Choate*, 1:25-cv-881, ECF No. 11 (D. Colo. Mar. 21, 2025)). In those cases, the courts issued orders restraining the respondents from transferring a noncitizen detainee outside the District of Colorado or removing the noncitizen detainee from the United States under the All Writs Act, 28 U.S.C. § 1651(a). *See Arostegui-Maldonado*, 2025 WL 2280357, at *12–16; *Batooie*, 2025 WL 1836695, at *2; *D.B.U.*, 2025 WL 1106556, at *1; *Vizguerra-Ramirez*, 1:25-cv-881, ECF No. 11 at *3–5. The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

The All Writs Act does not authorize this Court to prohibit Petitioner's transfer outside the district. The Supreme Court has made clear that "the express terms" of the All Writs Act "confine" courts "to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534–35 (1999).

Here, if Petitioner were to be transferred to a different facility in the United States outside the District of Colorado, it would not change this Court's jurisdiction over the habeas petition. Because Petitioner filed his habeas petition while he was in custody in Colorado, this Court maintains jurisdiction over the habeas petition even if he is moved

elsewhere in the United States. To be sure, it is generally the case that "jurisdiction for § 2241 proceedings normally lies only in the petitioner's 'district of confinement.'" *Serna v. Commandant, USDB-Leavenworth,* 608 F. App'x 713, 714 (10th Cir. 2015) (quoting *Rumsfeld v. Padilla,* 542 U.S. 426, 443 (2004)). But it is "well established that jurisdiction attaches on the initial filing for habeas corpus relief" and "is not destroyed by a transfer of the petitioner." *Id.* (quoting *Santillanes v. U.S. Parole Comm'n,* 754 F.2d 887, 888 (10th Cir.1985)). In short, because an order prohibiting transfer outside the district would not aid this Court's jurisdiction, the All Writs Act does not authorize the Court to issue an order that does not aid its jurisdiction.

Even if the All Writs Act did authorize an order restricting transfer outside the district, Congress, in the INA, stripped the Court of authority (even under the All Writs Act) to issue such an order. 8 U.S.C. § 1231(a) authorizes detention of noncitizens who are subject to a removal order. 8 U.S.C. § 1231(g)(1) in turn provides that "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."

The INA deprives courts of the authority to review discretionary decisions as to where to detain noncitizens. 8 U.S.C. § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . 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." Section 1252(a)(2)(B) bars review of discretionary decisions "when Congress itself set out the Attorney General's discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010).

The Tenth Circuit has held that one type of decision that Congress has placed within the Attorney General's discretion—and that is thus not subject to judicial review—is the decision *where* to house a detained noncitizen. In *Van Dinh v. Reno*, the Tenth Circuit held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprived the court of jurisdiction, in a class action lawsuit, to restrain the Attorney General's power to transfer noncitizens to appropriate facilities by granting injunctive relief. 197 F.3d 427, 433–34 (10th Cir. 1999). The *Van Dinh* court explained that 8 U.S.C. § 1231(g)(1)—which states in part that "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal"—provided "[t]he Attorney General[ ] discretionary power to transfer aliens from one locale to another, as she deems appropriate." 197 F.3d at 433. The court concluded that "[b]ecause the discretionary decision to transfer aliens from one facility to another and the correlative discretionary decision to grant or deny relief from such a transfer is a decision . . . under this subchapter, judicial review of that decision is expressly barred by § 1252(a)(2)(B)(ii)." *Id.* at 434 (second alteration in original) (quotation omitted). Accordingly, the INA prevents this Court from issuing an order prohibiting Respondents from transferring Petitioner to another detention facility.

Petitioner has thus failed to show a likelihood of success on the merits of his request to preclude Respondents from transferring him out of Colorado.[2]

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[2] The PI Motion does not include a request for a Court order precluding Petitioner's removal from the United States, *see* ECF No. 7 at 1; ECF No. 8 at 1, 3–5, although the Petition does request an emergency order preventing Petitioner's removal from the United States, ECF No. 1 at 16. Even if Petitioner were seeking an order preventing his removal from the United States in the PI Motion, he has not shown a likelihood of success on this request. First, the INA disallows district courts from reviewing the execution of a removal order. *See Soares v. U.S. Dep't of Homeland Sec.*, CV 23-2550

III. Petitioner has not established irreparable harm will result absent a preliminary injunction.

Petitioner has not established that he faces irreparable harm absent a preliminary injunction. "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) (quotation omitted). "Irreparable" harm is more than "serious" or "substantial" harm; the movant "must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Id.* (emphasis in original) (quotations omitted).

In the PI Motion, Petitioner argues that he is likely to suffer irreparable injury absent an injunction preventing his transfer because ICE has previously transferred him to various facilities in other states, his counsel is located in Denver, and communicating with his counsel from those other locations would frustrate his ability to reach his counsel. ECF No. 8 at 4. The cases to which he cites do not support that transfer to another district would constitute irreparable harm in his specific circumstances. In *Arostegui-Maldonado*, the court found that the petitioner's concern that needing to "litigate his case many states away from his lawyers would meaningfully deprive [him] of counsel's ability to aid in his representation for the duration of these habeas

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TJH (PVC), 2023 WL 6165729, at *1 (N.D. Cal. Aug. 24, 2023) ("[T]his [c]ourt has no jurisdiction to stay the execution of an administratively final order of removal.") (collecting cases). Second, a request for a stay of removal would fall beyond the scope of relief available in a habeas proceeding; such a proceeding does not provide a vehicle for an immigration detainee to challenge the detainee's removal. *Cf. Thuraissigiam*, 591 U.S. at 119 (concluding that where a habeas petitioner requested "to stay in th[is] country," the "relief requested falls outside the scope" of a habeas writ).

proceedings." 2025 WL 2280357, at *15 (quotation omitted). But in that case, the court noted that a bond hearing was upcoming within 14 days of the order and the petitioner's "transfer in the interim would significantly frustrate his counsel's ability to prepare for and assist Maldonado in that bond hearing." *Id.* In contrast, no court hearing has been set in this case. And in *Suri v. Trump*, 785 F. Supp. 3d 128 (E.D. Va. 2025), and *Ozturk v. Trump*, 779 F. Supp. 3d 462 (D. Vt. 2025), the courts were considering which states had jurisdiction to consider the underlying habeas petitions, *Suri*, 785 F. Supp. 3d at 133; *Ozturk*, 779 F. Supp. 3d at 470, an issue that is not presented in this case. While remaining within the District of Colorado may "facilitate [Petitioner's] ability to work with [his] attorneys," *Ozturk*, 779 F. Supp. 3d at 495, the potential of a transfer outside the district does not constitute the "certain, great, [and] actual" harm required to prevail on a preliminary injunction, *Heideman*, 348 F.3d at 1189.

Moreover, Petitioner's hypothetical transfer out of the District of Colorado would not frustrate this Court's exercise of jurisdiction over this matter, forestalling another potential source of injury to Petitioner. As explained above, *see supra* Section II, even if Petitioner were to be transferred out of the District of Colorado, this Court would continue to maintain its jurisdiction over the Petition. *See Serna*, 608 F. App'x at 714 (noting that it is "well established that jurisdiction attaches on the initial filing for habeas corpus relief" and "is not destroyed by a transfer of the petitioner" (quotation omitted).

Accordingly, Petitioner has not shown that he would suffer irreparable injury absent a preliminary injunction.[3]

IV. The balance of equities weighs against granting Petitioner relief.

If the Court reaches the third and fourth factors, these factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

It is well settled that the public interest in the enforcement of the United States' immigration laws is significant. *See, e.g.*, *id.* at 436; *Westley v. Harper*, No. 25-229, 2025 WL 592788, at *8 (E.D. La. Feb. 24, 2025) ("[T]here is a strong public interest in ensuring that immigration laws are followed."). Respondents have previously transferred Petitioner between the Denver CDF and ICE facilities in other states as part of its efforts to carry out Petitioner's exclusion order, Ex. A ¶¶ 13, 14, and curtailing Respondents' ability to transfer Petitioner out of the District of Colorado would frustrate the public's interest in seeing this order effectuated. *See Nken*, 556 U.S. at 436 ("There

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[3] Nor has Petitioner shown that he would face an irreparable harm from removal from the United States. First, a habeas proceeding is not a vehicle for challenging removal (which would end the detention). *See supra* Section II n.1. Second, Petitioner has not put forward any facts indicating he has been informed he will be removed imminently, and a mere concern about potential removal is not sufficient to show irreparable injury. *Accord Chaudhary v. Barr*, C20-635-RSM-BAT, 2020 WL 3100845, at *2 (W.D. Wash. June 11, 2020) (concluding potential removal did not constitute an irreparable injury where a petitioner "failed to present sufficient evidence that his removal is imminent or even scheduled to occur"). Third, even if removal could be challenged through this habeas proceeding, Petitioner has not shown the injury would be irreparable. "Although removal is a serious burden for many aliens, it is not categorically irreparable." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts have declined to treat the possibility of removal as constituting irreparable injury. *See Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) ("[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.").

is always a public interest in prompt execution of removal orders."). Petitioner's argument that the government "cannot be harmed by keeping him in the same facility for the pendency of this action," ECF No. 8 at 4–5, ignores this strong interest. And the only countervailing public interest Petitioner identifies is an interest in "reducing federal expenditure and costs associated with transferring immigration detainees from one facility to another," *id.* at 5, a weak interest compared to the public's interest in enforcement of federal law. The third and fourth factors weigh in Respondents' favor.

CONCLUSION

Because Petitioner has not established that he is likely to succeed on the merits of his argument that he is entitled to an order barring his transfer out of the District of Colorado pending the resolution of this habeas proceeding, or that he faces irreparable harm absent an injunction, the Court should deny the PI Motion, ECF No. 7.

Dated: November 3, 2025

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Alicia Alvero Koski
Alicia Alvero Koski
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: alicia.alvero.koski@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Alicia Alvero Koski
Alicia Alvero Koski
Assistant United States Attorney
Counsel for Respondents