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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SERVANDO TORRES HERNANDEZ,

Petitioner,

v.

PAMELA BONDI, Attorney General;
KRISTI NOEM, Secretary of Homeland
Security; TODD LYONS, Acting Director,
U.S. Immigration and Customs Enforcement
(ICE); JASON KNIGHT, Field Officer
Director, ICE Salt Lake Field Office;
KENNETH PORTER, Field Officer Director,
ICE Boise Field Sub-Office; STEVE
ANDERSON, Sheriff, Jefferson County,
Idaho,

Respondents.

Case No. 1:25-cv-00615-BLW

**RESPONSE TO MOTION FOR
TEMPORARY RESTRAINING ORDER
(Dkt. No. 1-3)**

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INTRODUCTION

The Court should deny Petitioner Servando Torres Hernandez’s Motion for a Temporary Restraining Order because this Court lacks jurisdiction over the Petition for Habeas Corpus and Petitioner is otherwise unlikely to succeed on the merits of his claims. Moreover, even if Petitioner was to succeed on his claims, he would not be entitled to the relief he seeks—an order prohibiting Respondents from relocating the Petitioner outside of the Court’s jurisdiction and an order prohibiting Respondents from removing Petitioner from the United States. Because Petitioner is unlikely to succeed on the merits of his claims, the Court should deny Petitioner’s Motion for a Temporary Restraining Order (Dkt. No. 1-3).

LEGAL STANDARD

In general, the showing required for a temporary restraining order (“TRO”) is the same as that required for a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a TRO, Petitioner must “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). When “a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal citation and quotation marks omitted).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. Few interests, however, “can be more compelling than a nation’s need to ensure its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also*

United States v. Brignoni-Ponce, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

The Ninth Circuit also has a “serious questions” test which dictates that “serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Thus, under the serious questions test, a TRO can be granted if there is a likelihood of irreparable injury to Petitioner, serious questions going to the merits, the balance of hardships tips sharply in Petitioner’s favor, and the injunction is in the public interest. *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012).

FACTUAL BACKGROUND

Petitioner Servando Torres Hernandez is a citizen of Mexico. (Petition, Dkt. No. 1 ¶¶ 1, 53; Declaration of Jared D. Callahan (Callahan Decl.) ¶ 4.) Petitioner acknowledges that he entered the United States “without inspection” in the year 2000. (Dkt. No. 1 ¶ 53.) On October 19, 2025, Petitioner was apprehended at an illegal horse racing and gambling event in Wilder, Idaho. (Dkt. No. 1 ¶ 55; Callahan Decl. ¶ 9.) ICE charged Petitioner under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled and placed Petitioner in removal proceedings under 8 U.S.C. § 1229a, issuing him a Notice to Appear (NTA). (Callahan Decl. ¶ 12.) Petitioner is currently detained at the Jefferson County Jail in Rigby, Idaho, pursuant to 8 U.S.C. § 1225(b)(2). (*Id.* ¶¶ 11, 18.)

Petitioner filed his Petition on October 24, 2025. (Dkt. No. 1.) His Petition included a Motion for a Temporary Restraining Order as an attachment. (Dkt. No. 1-3.) On October 28, 2025, the Court ordered Petitioner to refile his Emergency Motion for a Temporary Restraining Order and Ordered Respondents to Respond to that Motion and the Petition no later

than November 4, 2025. (Dkt. No. 3.) The Court further ordered Petitioner to serve the Petition on the United States Attorney for the District of Idaho by October 30, 2025. (*Id.*) Petitioner has neither refiled his Motion for a Temporary Restraining Order nor served the Petition (or the Motion for a Temporary Restraining Order) on the U.S Attorney for the District of Idaho.

ARGUMENT

I. Petitioner cannot establish a likelihood of success on the merits.

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot show a likelihood of success or serious questions going to the merits of his claim for alleged statutory violations arising from his mandatory detention under 8 U.S.C. § 1225 because (A) Petitioner failed to serve his Petition for Habeas Corpus; (B) the Court lacks jurisdiction to decide Petitioner’s claim; (C) Section 1225 governs Petitioner’s detention; and (D) Petitioner has failed to exhaust his administrative remedies. (*See Resp. to Pet. for Habeas Corpus*, Dkt. No 5.)

II. Petitioner is not entitled to the relief he seeks.

Petitioner asks this Court to enter an order prohibiting Respondents from “[r]emoving or deporting Petitioner from the United States while these proceedings are pending;” and “[t]ransferring Petitioner to any other facility outside of Idaho during the pendency of these proceedings.” (Dkt. No. 1-3 at 6-7.) Petitioner has identified no authority under which the Court may prevent Respondents from relocating the Petitioner. Indeed, the Secretary of the Department of Homeland Security has “broad discretion . . . to choose the pace of detention for deportable” noncitizens. *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022) (citing 8 U.S.C. § 1231(g)). Having granted the Secretary such broad discretion, Congress then prohibited courts from reviewing those discretionary decisions:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, . . . no court shall have jurisdiction to review— . . . (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. § 1252(a)(2)(B)(ii). Combined, Sections 1231(g)(1) and 1252(a)(2)(B)(ii) unambiguously strip courts of jurisdiction to adjudicate the Government’s determination of where a noncitizen should be housed pending removal proceedings. And because the Court has no jurisdiction to review the Government’s decision of where a noncitizen should be housed, it lacks jurisdiction to prohibit Respondents from relocating Petitioner outside of this District.

Moreover, such a restriction prevents Respondents from providing Petitioner with the bond hearing that he seeks because there are no immigration judges with jurisdiction to conduct a bond hearing in Idaho. (*See Callahan Decl.* ¶¶ 14-16.) The Court should immediately lift its order prohibiting Respondents from relocating the Petitioner outside of the District of Idaho.

Nor does this Court have jurisdiction to enter an order prohibiting Respondents from “removing or deporting Petitioner.” Respondents have initiated proceedings to remove Petitioner by serving him with a Notice to Appear. (*See Callahan Decl.* ¶ 12.) And Respondents will continue to process Petitioner’s removal. If a removal order is issued (which it has not been), the Court lacks jurisdiction to prohibit the execution of a removal order. Under 8 U.S.C. § 1252(g), “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings, adjudicate cases, or execute removal orders.*” 8 U.S.C. § 1252(g) (emphasis added).

Accordingly, this Court lacks jurisdiction to enter an order prohibiting Respondents from “removing or deporting Petitioner.”

III. Petitioner has not shown irreparable harm.

To prevail on his request for interim injunctive relief, Petitioner must demonstrate “immediate threatened injury.” *Caribbean Marine Serv. 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. Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)).

Here, Petitioner alleges that he faces irreparable harm because he “can file for non-lawful permanent resident cancellation of removal” and if “he is removed, he will lose this opportunity.” (Dkt. 1-3 at 6.) But this does allege irreparable harm. Petitioner has failed to show why he cannot raise this argument in his removal proceedings before an immigration judge. Petitioner’s initial hearing before an immigration judge is scheduled for December 1, 2025. Because Petitioner has failed to allege irreparable harm, the Court must deny his improperly filed Motion for a Temporary Restraining Order.

IV. The balance of equities does not tip in Petitioner’s favor.

It is well settled that the public interest in enforcement of the United States’ immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie’s House of Beef*, 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*, 556 U.S. at 435 (“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 citation and quotation marks omitted). ICE also has an “institutional interest” in protecting its “administrative agency authority.” See *McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002).

Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.

Global Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc., 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145. Thus, Respondents’ interest in enforcing the United States’ immigration laws and protecting its administrative processes outweigh the alleged harm in having to properly bring Petitioner’s removal-based arguments before an immigration judge.

CONCLUSION

For the reasons set forth above and in the Response to the Petition for Habeas Corpus, the Court should deny Petitioner’s Motion for a Temporary Restraining Order and lift its order prohibiting Respondents from removing Petitioner from the District of Idaho.

Respectfully submitted this 3rd day of November, 2025.

BART M. DAVIS
UNITED STATES ATTORNEY
By:

/s/ Christine G. England
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