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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RICARDO JOSE PEREA :
ARGUELLO, :
 : No. 25-4140
 : (D.C. No. 2:25-cv-00786 RJS)
 Plaintiff - Appellant, : (D. Utah)
 :
 vs. : MEMORANDUM BRIEF
 : REGARDING JURISDICTION
 KRISTI NOEM, et al., : (Dkt. No. 14)
 :
 Defendant - Appellees. :

Pursuant to the Court’s November 7, 2025, Order (Dkt. No. 13),
the United States respectfully submits this memorandum brief
regarding jurisdiction.

INTRODUCTION AND GROUNDS FOR THE MOTION

The Court sua sponte issued an Order identifying a potential
jurisdictional defect and considering this appeal for summary

disposition. (Dkt. No. 9). The Court questions whether it has jurisdiction over the district court's order vacating a previously-entered temporary restraining order.

Appellant responded to the Court's Order. (Dkt. No. 12). Appellant argues that he is appealing from the dissolution of a preliminary injunction even though the district court's order vacated a TRO. Appellant argues that the TRO "functioned in every practical respect as a preliminary injunction" and should be treated as one for purposes of the Court's jurisdiction. (ECF No. 12, pg. 2).

MATERIAL FACTS AND PROCEDURAL BACKGROUND

Appellant moved for a TRO in the district court on November 10, 2025—the same day he filed a complaint seeking declaratory relief. (ECF Nos. 1, 2). Later the same day, Appellant filed an amended complaint and motion for a temporary restraining order. (ECF Nos. 3, 4). Appellant's amended motion sought a TRO "pursuant to Federal Rule of Civil Procedure 65(b), to enjoin Defendants from removing Plaintiff from the United States pending adjudication of his pending asylum, withholding of removal, and Convention Against Torture (CAT) claims." (ECF No. 4, pg. 1).

After Appellant filed his amended motion seeking a TRO, the following happened:

- September 12, 2025: the district court held a status conference where it provisionally enjoined the United States from removing Appellant from the United States pending further order of the court. (ECF. No. 17).
- September 15, 2025: the district court issued its written order provisionally granting Appellant's motion for a TRO. (ECF No. 23). The order restrained and enjoined the Defendants from removing Appellant from the United States pending further order of the district court. The order set a briefing schedule for the TRO motion.
- September 23, 2025: the district court, following a hearing, modified the TRO. (ECF Nos. 33, 34). The modified TRO enjoined and restrained Defendants from removing Appellant from the United States pending further order from the district court.
- October 1, 2025: the district court renewed the TRO "for an additional fourteen days or until the court takes additional action." (ECF No. 37). This renewed TRO enjoined and restrained Defendants from removing Arguello from the United States pending further order of the court and ordered Appellant's return to Utah.
- October 7, 2025: the district court conducted an adversarial hearing with both parties present. (ECF No. 43). During that hearing, the district court granted Defendants' motion to dismiss certain claims for lack of jurisdiction and took under advisement Appellant's motion for a TRO.
- October 9, 2025: the district court by written order denied Appellant's motion for a TRO and vacated the previous provisional TROs. (ECF No. 44).

- October 23, 2025: the district court denied Appellant's motion for reconsideration. (ECF No. 53).
- October 28, 2025: Appellant filed a second amended complaint. (ECF No. 54).
- October 28, 2025: Appellant filed a notice of interlocutory appeal in the district court. (ECF No. 55).

ARGUMENT

This Court may hear appeals from interlocutory orders of the district court which grant, continue, modify, refuse, or dissolve injunctions. *See* 28 U.S.C. § 1292(a)(1). Appellate jurisdiction generally does not extend to interlocutory orders involving temporary restraining orders. *Office of Pers. Mgmt. v. Am. Fed'n of Gov't Employees v. Am. Fed. Of Gov't Employees, AFL-CIO*, 473 U.S. 1301, 1303–05 (1985); *Duvall v. Keating*, 162 F.3d 1058, 1062 (10th Cir.1998).

A TRO may be reviewed on appeal when, in substance, it is tantamount to a preliminary injunction, *Office of Pers. Mgmt*, 473 U.S. at 1304, or when the order is appealable as a final order under 28 U.S.C. § 1291. *Populist Party v. Herschler*, 746 F.2d 656, 661 n. 2 (10th Cir. 1984). Courts have treated a TRO as a preliminary injunction when it follows a full adversary hearing or, without appellate review, no further interlocutory relief is available. *E.g., id.*

Appellant claims the district court's vacatur of the TRO was tantamount to dissolution of a preliminary injunction. He argues the TRO functioned in every respect as a preliminary injunction because, first, it extended beyond fourteen days, and, second, it followed a full adversary hearing.¹

Leaning heavily on *Tooele County v. United States*, 820 F.3d 1183, 1187 (10th Cir. 2016), Appellant contends that the TRO he requested, and that the district court provisionally granted, should be treated as a preliminary injunction. In *Tooele County*, this Court declared that a TRO lasting longer than 14 days becomes a preliminary injunction for purposes of appealability, even if the district court labels it otherwise. *Id.* The Court considered only the order's duration in reaching that

¹ If the court has jurisdiction here it would be because the district court's October 9 order, entered after full briefing and argument, effectively denied a preliminary injunction, not because the provisional TRO remained in effect beyond 14 days. *See Carson v. American Brands, Inc.*, 450 U.S. 79, 83-84 (1981). The district court's approach suggests it granted a provisional TRO to put protections in place so that it could further consider whether to grant injunctive relief. When the district court later considered the matter on the merits and declined to issue continuing injunctive relief, its order would have functioned as a denial of a preliminary injunction, not dissolution of a TRO. *See e.g., Samson v. Murray*, 415 U.S. 61, 86-88 n. 58 (1974).

conclusion. *Id.* There the district court issued a TRO for an indefinite period and never extended or modified it. *Id.* at 1185.

This case is different. The briefing here focused on a request for a TRO. (ECF Nos. 2, 4). The proposed order submitted by Appellant was identified as a TRO. (ECF No. 4, Ex. 1). The district court orally granted the motion on September 12 and issued a provisional TRO which, in its written order, enjoined Appellants removal “pending further order from this court.” (ECF No. 23).

The district court then modified the TRO on September 16 and 25—within 14 days of issuing it. The district court renewed the TRO on October 1—six days later—“for an additional fourteen days or until the court takes additional action.” (ECF No. 37). The district court then vacated the TRO on October 9—27 days after orally granting it on September 12 and eight days after renewing it on October 1. (ECF No. 44); Fed. R. Civ. Pro. 65(b) (permitting a court to extend a TRO).

The district court’s modification and renewal of the TRO confirms it recognized the TRO’s temporary status. It does not suggest that the TRO was really an injunction. *Compare In re Arthur Treacher’s Franchise Lit.*, 689 F.2d 1150, 1154 (3rd Cir. 1982) (when a TRO “is

extended far beyond its statutory limits, even though it is authorized by the consent of the party against whom it is directed, such an order begins to lose its character as a temporary restraining order and begins taking on characteristics of a preliminary injunction order”) *with A.C. Ross v. Evans*, 325 F.2d 160, 160-61 (5th Cir. 1963) (where a TRO “order his been entered by consent until the further order of the court, and no application has been made to dissolve the restraining order, and no orders have been made with respect to the restraining order except to continue it in force, it will not have lost its character as a nonappealable temporary restraining order and become converted into an appealable preliminary injunction”).

The district court’s procedural approach does not warrant a different result. The primary distinction between a TRO and a preliminary injunction is the duration. Fed. R. Civ. P. 65(b) (identifying the requirements for a TRO issuance that are essentially the same as those for a preliminary injunction order); *Sampson v. Murray*, 415 U.S. 61, 86 n. 58 (1974); *Office of Pers. Mgmt.*, 473 U.S. at 1303-04; *In re Arthur Treachers Francise Lit.*, 689 F.2d at 1153 (3d Cir. 1982). That focus on duration explains the *Tooele County* court’s reasoning.

The district court's decision to hold hearings and accept full briefing, rather than act ex parte, does not change its approach to the TRO. *See* Fed. R. Civ. P. 65(b) advisory committee's note 1966 (“[i]n view of the possibly drastic consequences of a temporary restraining order, the opposition should be heard, if feasible, before the order is granted”). The district court treated the TRO as a temporary stop gap that it modified and renewed over the course of a few weeks. Once the court realized that Appellant did not satisfy the requirements for a TRO, it removed that temporary protection. That does not amount to the dissolution of a preliminary injunction.

RESPECTFULLY SUBMITTED this 12th day of November, 2025.

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/s/ Joel A. Ferre
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Certificate of Compliance

My memorandum brief was prepared in a proportionally spaced typeface and contains 1678 words. I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

/s/ Joel A. Ferre

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CERTIFICATE OF SERVICE

I CERTIFY that I am an employee of the United States Attorney's Office, and an electronic copy via the ECF system of the foregoing MEMORANDUM BRIEF REGARDING JURISDICTION was served to all parties.

/s/Joel A. Ferre