BART M. DAVIS, IDAHO STATE BAR NO. 2696
UNITED STATES ATTORNEY
ROBERT B. FIRPO, CALIFORNIA STATE BAR NO. 243991
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
1290 W. MYRTLE ST. SUITE 500
BOISE, ID 83702-7788
TELEPHONE: (208) 334-1211
FACSIMILE: (208) 334-9375
Email: Robert.Firpo@usdoj.gov

Attorneys for Federal Respondents

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

BERNARDO GUADARRAMA AYALA,

Petitioner,

v.

BRIAN HENKEY, Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement; KENNETH PORTER, Acting Director of the Boise U.S. Immigration and Customs Enforcement Field Sub-Office; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, and MIKE HOLLINSHEAD, Sheriff of Elmore County,

Respondents.

Case No. 1:25-CV-00682-AKB

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER (Dkt. No. 2) AND REQUEST TO DISSOLVE INJUNCTION GRANTED ON DECEMBER 4, 2025 (Dkt. No. 3)

Table of Contents

INTRODUCTION

After Petitioner Bernardo Guadarrama Ayala's (Petitioner) arrest on December 3, 2025, he filed a Petition for Writ of Habeas Corpus (Petition) (Dkt. No. 1) and a Motion for Temporary Restraining Order (Dkt. No. 2). The Court thereafter granted the Motion for Temporary Restraining Order and set a briefing schedule on the Petition. *See* Dkt. No. 3. The Court granted the injunction before service upon the Government or an opportunity for the Government to respond.

As described in detail in the Government's response to the Petition, Petitioner is not going to prevail on the merits. That is true not only because the Court lacks jurisdiction and venue, but also because Petitioner is unlawfully present in the United States, not seeking lawful admission, and properly subject to mandatory detention. In addition, given that Petitioner is unlawfully present and not seeking admission, none of the equities or the public interest weigh in his favor. Accordingly, the Court should dissolve the injunction entered on December 4, 2025, and allow the Government to follow the immigration process outlined in the statutes.

LEGAL STANDARD

In general, the showing required for a temporary restraining order (TRO) is the same as that required for a preliminary injunction. *See Stuhlbarg 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, a 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). Where "a plaintiff has failed to show the likelihood of success on the merits, [a court] 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. Particularly relevant here is the Government's interest in securing its borders, since few interests "can be more compelling than a nation's need" to provide for 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).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Bernardo Guadarrama Ayala is a native and citizen of Mexico. *See* Declaration of Jared D. Callahan (Callahan Decl.) ¶ 4; Dkt. No. 1 at ¶ 24. He admits entering the United States unlawfully and without inspection in 2016. Dkt. No. 1 at ¶ 24 (admits entering without inspection), ¶ 29 (admits entering "unlawfully").

On December 3, 2025, ICE arrested Petitioner in Caldwell, Idaho as a noncitizen present in the United States unlawfully. Callahan Decl. at ¶¶ 10, 13; Dkt. No. 1 at ¶ 26. ICE charged Petitioner under 8 U.S.C. § 1182(a)(6)(A)(i) and placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. *See* Callahan Decl. at ¶ 13. ICE detained Petitioner at the Elmore County Jail in Mountain Home, Idaho, without bond pursuant to 8 U.S.C. § 1225(b)(2), pending transportation to Las Vegas for removal proceedings. Callahan Decl. at ¶¶ 11-12.

On December 4, 2025, Petitioner filed the now-pending Petition and Motion for TRO (Dkt. Nos. 1, 2). Petitioner's core argument is that he should be eligible for a bond hearing as opposed to mandatory detention.

On December 4, 2025, the same day that the Petition was filed and before the Government had an opportunity to respond or move Petitioner to Las Vegas for removal proceedings, the Court issued an Order setting a briefing schedule on resolution of the Petition and granting the Temporary Restraining Order. *See* Dkt. No. 3 (Order) at ¶¶ 1-2 (setting briefing schedule), ¶¶ 5-6 (granting the requested injunction). Specifically, the Court granted the request for a temporary restraining order by prohibiting ICE from moving Petitioner within or out of the United States, Dkt. No. 3 at ¶ 5, and prohibiting ICE from engaging in "activities or communications with the Petitioner" regarding his rights or "removal proceedings" without the presence of counsel, Dkt. No. 3 at ¶ 6.

Because the Court's injunction precluded the Government from moving Petitioner to Las Vegas for immigration proceedings, the Order effectively halted immigration proceedings until the Court dissolves the TRO.[1] Callahan Decl. at ¶ 17.

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 on the merits of his claim for alleged statutory violations arising from his mandatory detention under 8 U.S.C. § 1225 because (a) the Court lacks jurisdiction, (b) the Court lacks venue, and (c) Petitioner admits to being unlawfully present and acknowledges that he is not seeking lawful admission. *See* Gov't Response to Petition at 6-11, Dkt. No. 7. Finally, even if the Court determines Petitioner is seeking

[1] There are no immigration judges in Idaho. Accordingly, ICE needs to relocate the Petitioner to Las Vegas or another location in order to proceed with regular immigration proceedings and/or provide any bond hearings. *See* Callahan Decl. at ¶¶ 13-17.

admission, the Government correctly determined that 8 U.S.C. § 1225(b) requires Petitioner's detention without bond. *See id.* at 11-17.

Because Petitioner is not likely to succeed on the merits, the Court must dissolve the TRO and allow the Government to proceed with immigration proceedings.

II. Petitioner is not entitled to the relief which the Court has already granted.

Petitioner asked this Court to enter an order "preventing Respondents from relocating the Petitioner out of the Court's jurisdiction [and] from taking actions to effect his removal from the United States." *See* Dkt. No. 2-1 at 14-15. However, Petitioner identified no authority under which the Court may prevent Respondents from relocating the Petitioner. Petitioner by his own admission is unlawfully present and not seeking admission to the United States. He is therefore immediately removable pursuant to 8 U.S.C. § 1225(a)(4) because he is not an applicant for admission. By definition, an applicant for admission is one seeking lawful admission.

The Secretary of the Department of Homeland Security has "broad discretion . . . to choose the place 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.

Ironically, the Court's injunction preventing ICE from moving Petitioner prevents the Government from providing Petitioner any immigration proceedings. *See* Callahan Decl. at ¶¶ 13-17. That is because there are no immigration judges in Idaho. *See id.* The Court should immediately lift its order prohibiting Respondents from relocating the Petitioner outside of the District of Idaho because it unlawfully interferes with the removal process.

III. Petitioner has not shown irreparable harm.

The Court should likewise dissolve the injunction because Petitioner has not demonstrated "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, and detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. 20-CV-0377, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, 854 Fed. App'x 190 (9th Cir. 2021) ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). 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 claims irreparable harm if he is moved because his "family, his attorneys, and his home are all located in the State of Idaho." Dkt. No. 2-1 at 12. But those harms do not justify release or an injunction preventing his transportation under the facts of this case.

Petitioner's family, attorneys and home may be in Idaho, but Petitioner has admitted unlawful entry and unequivocally stated that he is not seeking admission into the United States. *See* Dkt. No. 2-1 at 7 (Petitioner admits he "has not sought admission"), 9 (Petitioner admits he is "not now seeking admission"). Petitioner may well desire to continue living unlawfully in the United States, but it is certainly unequitable to grant that relief given his admissions and the statutory scheme providing for legal immigration. Petitioner's status as a noncitizen alien, unlawfully present and not seeking admission means that he is not an applicant for admission and therefore immediately removable. *See, e.g.*, 8 U.S.C. § 1225(a)(4).

Finally, even if Petitioner were detained under 1226(a) and entitled to a bond hearing, he would still have to be moved to Las Vegas for the bond hearing. *See* Callahan Decl. at ¶¶ 13-17. That is to say, even if Petitioner were legally correct on the merits, it would still not have been appropriate to enjoin the Government from moving Petitioner. Because there is no equitable reason to award Petitioner relief to which he is not entitled even if he wins on the merits, the Court should immediately dissolve the injunction previously issued.

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

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, Inc. v. Castillo*, 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."); *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).[2] ICE also has an "institutional interest[]" in protecting its "administrative agency authority." *See McCarthy v. Madigan*, 503 U.S. 140, 145 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). 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.

Petitioner claims the balance of hardships and public interest weigh in his favor given the loss of liberty, significant stress and anxiety, and removal from his home. Dkt. No. 2-1 at 13. But all of these alleged harms would likewise exist if Petitioner were detained under 1226(a)—these are hardships inherent in detention. More importantly, however, Petitioner's harms are premised on the fiction that he may have some basis to legally remain and thus should be entitled to process to test that theoretical basis. In this case, however, Petitioner has admitted his unlawful entry, admitted a criminal history, and admitted he is not seeking lawful admission. Petitioner has also been in the United States for some time and never sought asylum. *See* Callahan Decl. at ¶ 8. Thus, Petitioner seeks to live in the United States unlawfully without being bothered by the immigration system. There is no public interest in allowing Petitioner to live here unlawfully and undisturbed. Accordingly, the Court should dissolve the injunction previously issued because the balance of hardships and public interest favor the Government.

CONCLUSION

For the reasons set forth above and in the Response to the Petition for Habeas Corpus, the Court should dissolve the injunction previously issued and allow the Government to address Petitioner's unlawful presence in the United States through removal proceedings.

---

[2] This interest is particularly strong here where Petitioner admits unlawful entry and concedes he is not seeking admission to the United States.

Respectfully submitted this 11th day of December, 2025.

BART M. DAVIS
UNITED STATES ATTORNEY
By:

/s/ Robert B. Firpo
ROBERT B. FIRPO
Assistant United States Attorney