District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAZARO FELIPE NAVARRO-MAURY, Petitioner, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:26-cv-00333-TMC FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: February 17, 2026.

I. INTRODUCTION

This Court should deny Petitioner Lazaro Felipe Navarro-Maury's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while he awaits removal from the United States.

Petitioner's is detained pursuant to a final order of removal under 8 U.S.C. § 1231, not under the pre-order detention authorities on which he relies. His detention is expressly authorized by controlling Supreme Court precedent in *Zadvydas*, and supported by an active and ongoing

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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effort to effectuate his removal. His removal is not speculative or remote—it was imminent before this Court's temporary restraining order intervened.

The Supreme Court has made clear that post-order detention is lawful for a period reasonably necessary to accomplish removal, and six months is presumptively reasonable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner has been detained for approximately four months. He has not argued, let alone demonstrated, that there is no significant likelihood of removal in the reasonably foreseeable future. To the contrary, the record shows that DHS secured travel documentation, scheduled removal, and complied with all procedural safeguards, including referral for a fear screening when Petitioner claimed fear of removal to Mexico.

This Court should also deny Petitioner's Motion for Temporary Restraining Order. Dkt. 2 ("TRO"). Instead of addressing the governing legal framework, Petitioner relies on inapplicable pre-order detention authority and seeks extraordinary injunctive relief in the form of a TRO that would disrupt the lawful execution of a final removal order. The law does not support that request.

Because Petitioner's detention is lawful, his removal is reasonably foreseeable, and he cannot satisfy the demanding standard for emergency relief, the habeas petition and motion for a TRO should be denied.

II. DETENTION AUTHORITY

A. Detention Authorities and Removal Procedures

The INA contains a complex scheme of authorities governing the detention and release of aliens during and following their removal proceedings. These periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention). Once a final order of removal has been entered, an alien enters what Congress has called the "removal period." 8 U.S.C.

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§ 1231(a)(1). During this period of 90 days, Congress has directed that the Secretary of Homeland Security "shall remove the alien from the United States." *Id.* ICE[2] is charged with attempting to effectuate removal of an alien from the United States. 8 U.S.C. § 1231(a)(1). To ensure an alien's presence for removal and to protect the community from dangerous aliens while removal is being achieved, Congress directed:

> During the removal period, the [Secretary of Homeland Security][3] shall detain the alien. *Under no circumstance during the removal period* shall the [Secretary] release an alien who has been found inadmissible under section 1182(a)(2) or 212(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

8 U.S.C. § 1231(a)(2) (emphasis added).

Section 1231(a)(6) authorizes the Department of Homeland Security ("DHS") to continue detention of aliens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> An alien ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that an alien may be detained only "for a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The

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[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

[3] Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining aliens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security. *See also* 6 U.S.C. § 251.

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Supreme Court has further identified six months as a presumptively reasonable time to bring about an alien's removal. *Id.*, at 701.

If an alien cannot be removed to the country designated in his removal order because the country refuses to accept the alien, the alien has been granted relief from removal to that country, the country refuses to recognize the alien as its citizen, or another reason, Congress has directed ICE to pursue removal to alternate countries. *See* 8 U.S.C. §§ 1231(b)(2)(D), (E); 1231(b)(3); 8 C.F.R. §§ 241.13(a), 241.15.

B. Third Country Removal

When the government seeks to remove an individual, it may do so through removal proceedings involving an evidentiary hearing before an Immigration Judge ("IJ"). 8 U.S.C. § 1229a. In removal proceedings, the IJ determines both whether the individual may be removed from the United States designates a country or countries to which they will be removed, subject to DHS's statutory authority under 8 U.S.C. § 1231(b)(2). *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country of removal.

First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C. § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ must first select the "country of which the alien is a subject, national, or citizen[.]" 8 U.S.C. § 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to "any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E):

(i) The country from which the alien was admitted to the United States.

(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

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(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

(iv) The country in which the alien was born.

(v) The country that had sovereignty over the alien's birthplace when the alien was born.

(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

Finally, Section 1231(b)(2)(E)(vii) provides that "[i]f impracticable, inadvisable, or impossible to remove the alien to each country" described above, the statute permits removal to any "country whose government will accept the" noncitizen. 8 U.S.C. § 1231(b)(2)(E)(vii).

The government is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a person to a country where they would be tortured, a form of protection known as protection under the Convention Against Torture (CAT). *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16-1208.18. Withholding of removal and CAT protection are mandatory, but "only restrict *where* the Government may remove a noncitizen to, not *whether* the noncitizen is subject to removal." *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the IJ grants such protection, the removal order remains valid and enforceable, albeit not to the identified country or countries of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

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C. DHS Policy on Third Country Removals

On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third country removals. *See* U.S. Department of Homeland Security, "Guidance Regarding Third Country Removals," Kristi Noem, March 30, 2025, *available at* https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited Feb. 11, 2026) ("DHS Memo"); U.S. Immigration and Customs Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025, *available* at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited Feb. 11, 2026) (hereinafter "July 9 Memo"); *see also Kumar*, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two).

The July 9 Memo discusses DHS's policies and procedures regarding the removal of individuals with final orders of removals to countries other than those designated for removal in those orders (referred to as "third country removals"). According to the guidance outlined in the July 9 Memo, if DHS has not received diplomatic reassurances from the designated country, DHS will first inform the individual that DHS seeks removal to that country. *Id.*, at 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to the U.S. Citizenship and Immigration Services ("USCIS") for a reasonable fear interview, to screen that person for protection against removal to that country. *Id.*

After the interview is conducted, USCIS will determine whether the individual would more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that the individual has met this standard, if the person was previously in removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.*

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Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen their prior removal proceedings at any time they so choose, based on a request for asylum, withholding of removal, or protection under the Convention Against Torture. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

III. FACTUAL BACKGROUND

Petitioner Lazaro Felipe Navarro-Maury is a native and citizen of Cuba, who was paroled into the United States on or about November 20, 1995, pursuant to Section 212(d)(5) of the Immigration and Nationality Act ("INA"). Declaration of Deportation Officer Kurtis Reed ("Reed Decl.") ¶ 4. On or about January 28, 1998, the United States Immigration and Naturalization Services ("INS") approved Petitioner's application for advanced parole of an applicant for adjustment of status pursuant to Section 212.5(c)(3) of the INA in order for Petitioner to travel to Mexico to visit family. *Id.* ¶ 5. On or about October 29, 1998, Petitioner was convicted in the Circuit Court of the State of Oregon, Multnomah County, of three counts of attempted murder for using his vehicle to attempt to run over three victims Case #C9806-35459 – and sentenced to ninety months of imprisonment for each count to run concurrently, with a period of post-prison supervision for 36 months, rendering the conviction an aggravated felony as well as a crime involving moral turpitude. *Id.* ¶ 6/

Petitioner's parole was revoked on November 25, 1998, by INS because of the Petitioner's attempted murder conviction – Petitioner was not detained by INS at the time of the revocation. *Id.* ¶ 7. INS then issued a Notice to Appear pursuant to Section 212(a)(2)(A)(i)(I) of the INA., which was served on December 23, 2005, as he was serving out his sentence at the Oregon State Correctional Institute in Salem, Oregon, until that date. *Id.* On April 10, 2005, the INS denied the

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Petitioner's application for status as permanent resident as a result of the Petitioner's aggravated felony conviction for attempted murder. *Id.* ¶ 8.

On December 23, 2005, following time served for his attempted murder conviction, Petitioner was transferred to ICE custody, where he remained until March 27, 2006, from a correctional institution in the state of Oregon and served with a Notice to Appear pursuant to Section 212(a)(2)(A)(i)(I) of the INA. *Id.* ¶ 9.

On January 3, 2006, an immigration judge in Seattle, Washington, ordered Petitioner removed from the United States to Cuba. *Id.* ¶ 10. All parties waived appeal, rendering this order administratively final. *Id.*; Declaration of Alixandria K. Morris ("Morris Decl."), Exs. 1-2 (I-213; IJ Order).

On or about March 27, 2006, DHS released the Petitioner from custody, after being in ICE detention from December 23, 2005, under an order of supervision pursuant to Section 241(a)(3) of the INA because there was no procedure in place with the government of Cuba at that time in securing travel documents for Cuban citizens, Petitioner's claims that he has been rehabilitated, and DHS belief that Petitioner had a support network and job offer if released. Reed Decl. ¶ 11.

Under the order of supervision, Petitioner was required to follow certain conditions and rules, including following state and federal laws and ensuring that DHS is aware of any address changes, enroll in the Telephonic Reporting System, and report every three months in person at an ICE office. *Id.* On June 1, 2015, Petitioner was convicted and sentenced in the Washington County Circuit Court, Oregon, to two years' probation for misdemeanor Harassing Communication – court case D151492M. *Id.* ¶ 12.

On November 26, 2020, Petitioner was arrested by the Portland Police Bureau for felony domestic abuse – strangulation, harassing communication, and assault in the fourth degree – 2 counts, in Multnomah County, Oregon – case number 20CR65717. *Id.* ¶ 13. The strangulation

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and assault charges were dismissed, and no complaint was filed on the charge of harassing communication. *Id.*

On October 28, 2025, DHS revoked the Petitioner's supervised release pursuant to violations of the conditions of his release by being arrested on November 26, 2020, and detained him at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. *Id.* ¶ 14. Petitioner was served with the notice to revoke that stated that "ICE has determined that you have violated conditions of your release that were listed in the Order of Supervision you were issued at the time of your release from ICE custody on March 27, 2006, e.g., you have violated the conditions of your release as follows: On November 26, 2020, you were arrested in Portland, Oregon for Strangulation Constituting Domestic Violence, Felony, Harassing Communications Constituting Domestic Violence, and Attempt to Commit Crime: Assault in Fourth Degree Constituting Domestic Violence." *Id.*

Petitioner was given an informal interview in order to afford the Petitioner an opportunity to respond to the reasons for revocation of the order of supervision pursuant, on October 28, 2025. *Id.* ¶ 15. On October 31, 2025, during a regular visit with the Petitioner, he voluntarily stated to a DO that he would like to be removed to Mexico. *Id.* ¶ 16. On December 23, 2025, DHS served Petitioner with a Notice of Intent to Remove to Mexico. Petitioner refused to sign the notice. *Id.* ¶ 17.

On January 9, 2026, DHS re-served Petitioner with a Notice of Intent to Remove to Mexico. *Id.* ¶ 18. Petitioner once again refused to sign the notice and claimed fear of being kidnapped in Mexico. *Id.* On January 9, 2026, DHS requested a credible fear determination interview of the Petitioner from the United States Citizenship Immigration Services ("USCIS"). *Id.* ¶ 19. On January 28, 2026, USCIS determined that Petitioner did not have a credible fear of being removed to Mexico. *Id.* ¶ 20.

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Prior to the issuance of the January 29, 2026, Temporary Restraining Order prohibiting the Petitioner's removal, the Petitioner was placed on a flight manifest and scheduled for removal to Mexico via ICE air. *Id.* ¶ 21. DHS re-served the Petitioner with third-country removal to Mexico notice on January 30, 2026. *Id.* As of February 10, 2026, DHS is also waiting for a response from the Cuban government on whether they will accept the Petitioner if he is removed from United States. *Id.* ¶ 22. Petitioner is currently detained at the NWIPC pursuant to 8 U.S.C. § 1231. *Id.* ¶ 23.

IV. LEGAL STANDARD

A. Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Thuraissigiam*, 591 U.S. at 125 n. 20. Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

B. Temporary Restraining Order ("TRO")

A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (the TRO standard is "substantially identical" to preliminary injunction standard). A petitioner must establish: (1) "that he is likely to succeed on the merits"; (2) "that he is likely to suffer irreparable

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harm in the absence of preliminary relief"; (3) "that the balance of equities tips in his favor"; and (4) "that an injunction is in the public interest." *Winter*, 555 U.S. at 20. Alternatively, a petitioner who shows only that there are "serious questions going to the merits" may satisfy the *Winter* requirements by establishing that the "balance of hardships [] tips sharply towards [the petitioner]," and that the remaining two *Winter* factors are met. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

Preliminary relief is meant to preserve the status quo pending final judgment, rather than obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). When preliminary relief would change the status quo and "order a responsible party to take action," it is "particularly disfavored." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009). Indeed, "[i]n general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in the original). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted).

Here, rather than preserving the status quo, Petitioner seeks mandatory injunctive relief in the form of an order requiring his immediate release.

V. ARGUMENT – HABEAS PETITION

A. The Court Should Not Consider Arguments Not Argued by the Petitioner in the Habeas Petition or Arguments Raised for the First Time on Reply

Petitioner mistakenly argues for his release based on precedent relating to pre-order detention under 8 U.S.C. § 1226(a) (pre-order detention), arguing Petitioner is entitled to a bond

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hearing as a member of the *Rodriguez Vazquez*[4] bond denial class. *See* Pet. ¶¶ 3, 25. This argument is irrelevant as Navarro-Maury is detained pursuant to 8 U.S.C. § 1231(a) (post-order detention). This Court should not consider any claims not explicitly raised by Petitioner concerning his claims of unlawful detention.

As the Ninth Circuit has found, and many courts in this district have held pertaining to recent habeas petitions, this remains true even if Petitioner seeks to raise issues for the first time in his traverse. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief."); *see also Cacoperdo v. Demosthenes*, 37 F.3d 504, 507 (9th Cir. 1994) ("In order for the State to be properly advised of additional claims, they should be presented in an amended petition or . . . in a statement of additional grounds."); *Lorenzo v. Bondi, et al.*, No. 2:25-cv-02660-LK, 2026 WL 237501 at *2 n.4 (W.D. Wash. Jan. 29, 2026); *Calderon v. Noem*, No. 2:25-CV-2136-LK-TLF, 2025 WL 3754042, at *4 (W.D. Wash. Dec. 29, 2025); *McClellon v. Rickard*, No. 24-CV-10053 (VSB) (BCM), 2025 WL 3286917, at *10 (S.D.N.Y. June 24, 2025) ("[i]t is well-settled . . . that a habeas petitioner cannot amend his petition – much less introduce wholly new claims – in his reply brief.").

Petitioner's sole claim raised in his habeas petition pertains to unlawful detention regarding his detention according to 8 U.S.C. § 1225(b)[5] rather than 1226(a). *See* Pet. ¶¶ 3, 5-6, 11, 24-29; *see also id.*, Prayer for Relief ¶ (c).

Thus, Petitioner should be precluded from now arguing he is unlawfully detained

[4] Petitioner also errs by arguing that Federal Respondents in this district must comply with *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). Federal Respondents dispute they are subject to such an order in this district. Federal Respondents acknowledge the declaratory relief granted in *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1303 (W.D. Wash. 2025) ("Rodriguez Vazquez"). However, the disparity between the C.D. Cal case and the W.D. Wash. Case is irrelevant. Here, Petitioner is not detained pursuant to *any* pre-order detention authority but detained pursuant to post-order detention.

[5] Petitioner also seems to assert his current detention is pursuant to §1229a. *See* Pet. ¶ 6.

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according to any other theory. This is particularly true where Petitioner (and his counsel) were clearly on notice of his post-order detention posture. ICE clearly stated and made known its intention to remove Petitioner imminently (the subject to Petitioner's TRO), which would necessarily require that Petitioner is subject to a final order of removal. Dkts. 2, 4; Reed Decl. ¶¶ 17-18.

B. Even if the Court were to Consider Claims not Pleaded by Petitioner, The Petition Should Still be Denied as Petitioner's Detention is Lawful

A noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. Petitioner has not met his burden by showing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*, at 701. Indeed, he has not even argued it. His approximately 4-month detention is presumptively reasonable while ICE works to arrange his removal. This is particularly true where ICE was ready and able to effectuate his removal, but was barred from doing so by Court order.

While the Government does not concede that Petitioner's presumptively reasonable period has ended[6], even assuming arguendo that it has, Petitioner fails to demonstrate that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. ICE has clearly obtained both a travel document and secured a flight to effectuate his removal. Dkts. 2, 4.

Thus, Petitioner has failed to demonstrate a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at

[6] Federal Respondents acknowledge that Courts in this district disagree as to whether the presumptively reasonable period expires six months after a final order, regardless of detention. *See Tran v. Bondi*, No. CV-25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *but see Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *3, n.2 (W.D. Wash. Dec. 15, 2025). For the reasons set forth in their briefing in the *Tran* case, Federal Respondents do not agree with that decision. In any event, Petitioner's detention is still lawful even past the presumptively reasonable period for the reasons stated herein.

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701. Accordingly, Petitioner's detention does not violate principles of due process.

Any claims regarding OSUP revocation are inapplicable here due to Petitioner's criminal history while on release. Reed Decl. ¶¶ 12-14.

VI. ARGUMENT – TEMPORARY RESTRAINING ORDER

Petitioner does not satisfy the requirements for preliminary relief because he is unlikely to succeed on the merits, has not shown irreparable harm, and the balance of the interests and public interests favor the Government.

A. Petitioner is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241.

1. Petitioner fails to demonstrate that his detention is unlawful or his due process rights were violated.

Petitioner has not shown that he is in immigration custody in violation of the Constitution, law, or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detained him pursuant to 8 U.S.C. § 1231(a). For the reasons stated above, Petitioner asserts the wrong detention authority and fails to show he is unlawfully detained. *See supra* pg. 11. For the reasons stated herein, Petitioner is unlikely to succeed on the merits of his habeas claim. *Id.*

2. Petitioner Seeks Unlawful Relief

Petitioner's request for relief goes beyond what is permissible by statute. Plaintiff asks the Court to enjoin Federal Respondents from removing Petitioner. *See* Dkt. 2 (seeking the court enjoin ICE from transferring Petitioner outside this district). But the law is clear: under 8 U.S.C.

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§ 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 against any alien." This Court cannot lawfully enjoin Federal Respondents from executing removal orders against this Petitioner. To do so would directly violate the jurisdiction-stripping provision at 8 U.S.C. § 1252(g). *See e.g., Aleman v. Bondi*, No. 2:25-cv-02346-JNW, 2026 WL 102457, at *2–4 (W.D. Wash. Jan. 14, 2026).

Even if the Court had jurisdiction, a TRO would not be justified here. While seeking an order to prevent any transfer from going forward, Petitioner does not allege any issues at all related to his impending removal being unlawful. *See* Dkts. 1, 2. In the absence of arguments on-point and even if the Court inferred arguments on behalf of Petitioner, Petitioner still has no claim. Petitioner himself suggested Mexico as a third country for removal. Reed Decl. ¶ 16. Petitioner was properly served with multiple notices of removal to Mexico. *Id.* ¶¶ 17-18. Once Petitioner claimed fear of removal to Mexico, DHS forwarded his request that same day to U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 19. USCIS conducted a credible fear interview of Petitioner and determined he did not have credible fear. *Id.* ¶ 20.

Thus, even if the Court were inclined to infer arguments the Petitioner did not make or to decide issues beyond its jurisdiction, it would still conclude that ICE followed the proper removal procedures in this case. A TRO would be improper on this basis alone. As such, the Court should deny Petitioner's requested relief.

B. Petitioner has not shown irreparable harm.

Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1201 (9th

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Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing 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.

Petitioner asks this Court to find that his transfer outside this jurisdiction would separate him from family and counsel. Dkt. 2, pg. 2. But the separation he contends is common to all noncitizens facing removal and therefore does not constitute irreparable harm. *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[.]"); *Taha v. Bostock*, No. C25-649-RSM, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025) ("The Court agrees with Defendants that Petitioner's 'irreparable harm-based argument begs the constitutional questions presented in his petition by assuming that [P]etitioner has suffered constitutional injury[,]' and his emotional harm from this 'loss of liberty' is 'common to all' like Petitioner.").

Petitioner also asserts he will not receive a bond hearing at the Tacoma immigration court. Dkt. 2, pg. 2. Federal Respondents are aware that such hearing already occurred on February 2, 2026, and Petitioner was not granted bond.[7] Morris Decl., Ex. 3 (Bond Order). Thus, this is not a

[7] The immigration judge denied bond finding Petitioner subject to mandatory detention pursuant to 8 U.S.C. 1226(c) based on Petitioner's criminal history. Morris Decl., Ex. 3. Federal Respondents believe this to be a result of Petitioner's counsel asserting in err that Petitioner was detained pursuant to § 1226(a). Regardless, the error at immigration court does not impact the analysis before the Court in the instant habeas petition because the evidence clearly demonstrates that Petitioner is lawfully detained pursuant to § 1231(a); the hearing has already occurred, rendering the claim of irreparable harm moot; and immigration judges lack authority to issue bond for detainees subject to a final removal order. Reed Decl. ¶¶ 9-10, 23; Morris Decl., Ex. 2 (IJ Order).

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valid circumstance warranting relief as the hearing has already occurred. *Id.* Petitioner has not shown extraordinary circumstances warranting emergency relief.

C. The balance of the interests and public interests favor the Government.

It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (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.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders). This public interest outweighs Petitioner's private interest here. Petitioner asks the Court to declare his detention unconstitutional and forestall his removal, despite the Government's valid reasons and statutory bases for detaining him, and ability to remove him imminently. Accordingly, this Court should deny his TRO.

VII. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the habeas petition and the TRO.

Dated this 12th day of February, 2026.

Respectfully submitted,

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I certify that this memorandum contains 5,271 words, in compliance with the Local Civil Rules.