

Magistrate Judge Grady J. Leupold

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

MASSERAY SIBY,

Petitioner,

v.

JULIO HERNANDEZ,¹ Field Office Director
of Enforcement and Removal Operations,
Seattle Field Office, Immigration and Customs
Enforcement; MARKWAYNE MULLIN,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; BRUCE
SCOTT,² Warden, Northwest Immigration and
Customs Enforcement Processing Center,

Respondents.

Case No. 2:26-cv-00993-GJL

FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER

Noted for Consideration:
March 27, 2026

I. INTRODUCTION

Petitioner is subject to a final order of removal and is lawfully detained pursuant to 8
U.S.C. § 1231(a). Post-order detention is presumptively lawful for six months after a removal

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo/Cammilla Wamsley/Drew Bostock.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 order becomes administratively final, and then for as long as removal is likely to occur in the
2 reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Here, Petitioner's
3 removal is not merely "likely to occur" in the future: Petitioner's removal is imminent. Thus,
4 Petitioner's detention is far from indefinite and his habeas claim must fail.

5 Despite this fact, Petitioner seeks the extraordinary relief of an emergency order enjoining
6 his transfer and removal from the United States. Even if jurisdiction existed, Petitioner has not
7 carried his burden under *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20
8 (2008). Likelihood of success on the merits is the most important factor in the analysis, and, as
9 described above, Petitioner cannot satisfy that threshold requirement. *See Geo Group v. Inslee*,
10 151 F.4th 1107, 1114 (9th Cir. 2025).

11 Petitioner is not likely to succeed on the merits, has not demonstrated irreparable harm,
12 and the equities tip sharply in favor of Federal Respondents. For these reasons, the Court should
13 deny the motion.

14 II. LEGAL STANDARD

15 The standard for issuing a temporary restraining order is "substantially identical" to the
16 standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
17 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is
18 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*
19 *showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
20 (emphasis in original) (internal quotations omitted); *Winter*, 555 U.S. at 22.

21 A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on
22 the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the
23 balance of equities tips in his favor, and (4) an injunction is in the public interest. *See Winter*,
24 555 U.S. at 20 ("*Winter* factors"). Alternatively, a plaintiff can show that there are "serious

1 questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long
2 as the second and third *Winter* factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*,
3 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

4 The purpose of preliminary injunctive relief is to preserve the status quo pending final
5 judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v.*
6 *Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

7 8 **III. ARGUMENT**

9 **A. The Court Lacks Jurisdiction Because Petitioner Was Not Present in the District at the Time of Filing**

10 This Court lacks jurisdiction to entertain the Petition for a writ of habeas corpus under
11 28 U.S.C. § 2241. It is well established that jurisdiction in habeas proceedings attaches at the time
12 the petition is filed, and that both the petitioner and his custodian must be within the territorial
13 jurisdiction of the district court at that moment. *See Schlanger v. Seamans*, 401 U.S. 487, 491
14 (1971) (holding “[t]he procedure governing issuance of the writ is provided by statute. The federal
15 courts may grant the writ ‘within their respective jurisdictions.’) (citing 28 U. S. C. § 2241(a)).
16 Where those conditions are not satisfied at filing, the court lacks jurisdiction and cannot proceed
17 to the merits.

18 The Supreme Court has long held that jurisdiction is determined based on the
19 circumstances existing at the time of filing. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*,
20 303 U.S. 283, 289–90 (1938); *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824). This
21 principle applies with equal force in the habeas context. The Ninth Circuit has expressly
22 confirmed that “jurisdiction attaches on the initial filing for habeas corpus relief.” *Francis v.*
23 *Rison*, 894 F.2d 353, 354 (9th Cir. 1990); *see also Johnson v. Gill*, 883 F.3d 756, 760–61 (9th
24 Cir. 2018).

1 The question presented is when does that jurisdiction attach -- at the time of the
2 filing of the petition, as contended by the appellant, or at a subsequent time when
3 the court issues an order based upon the petition, as contended by appellees. It is
4 agreed that at the time the petition was filed, both the petitioner and his immediate
5 commanding officer were within the territorial limits of the district court.

6 *Smith v. Campbell*, 450 F.2d 829, 832–34 (9th Cir. 1971).

7 These jurisdictional requirements operate in tandem with the statutory mandate that a
8 habeas petition name the petitioner's immediate custodian: the person with present, physical
9 control over the detainee at the time of filing. *See* 28 U.S.C. §§ 2242-2243. Thus, both the
10 petitioner's location and the identity and location of the proper custodian must be fixed and
11 correct at the moment of filing.

12 Here, neither requirement is satisfied. Petitioner was not within the Western District of
13 Washington at the time the Petition was filed. Petitioner was transferred to Arizona on March 24,
14 2026. Petitioner's flight departed King County International Airport on March 24, 2026, at
15 11:52 a.m. Pacific Time. Dkt. 10 ¶ 5. Petitioner was outside the custody of the warden at the
16 Northwest ICE Processing Center (NWIPC) when he departed the facility to be transported to the
17 airport, which occurred before his flight departed. Petitioner was processed into custody in
18 Arizona on March 24, 2026, at approximately 2:45 p.m. Pacific Time. *Id.* ¶ 7. Given a flight
19 duration of approximately three hours, Petitioner necessarily was no longer within the Western
20 District of Washington, or even within Washington State airspace, at the time the Petition was
21 filed (2:09 p.m. Pacific Time). *Id.* ¶ 6; Dkt. 1.

22 At the same time, the Petition fails to name a proper custodian within this district.
23 Although it identifies the NWIPC warden, that individual was not Petitioner's immediate
24 custodian at the time of filing. He did not have day-to-day control over Petitioner once Petitioner
25 departed NWIPC for transport, was not Petitioner's custodian during the flight, and was not
26 Petitioner's custodian when the Petition was filed. Nor could he produce Petitioner in response to

1 the writ. Accordingly, the Petition does not satisfy the statutory requirement that the writ be
2 directed to the person with present custody over the petitioner.

3 Because jurisdiction attaches at the moment of filing, Petitioner was required to be in
4 custody within this District and subject to a properly named, in-district custodian at that time. He
5 was not. Even under the most expansive interpretation, Petitioner could only have been within
6 Washington airspace for a brief period, approximately 15 to 20 minutes, early in the flight, and
7 hours before the Petition was filed. Thus, there is no plausible basis to conclude that either
8 Petitioner or his custodian was present within the territorial jurisdiction of this Court at the
9 relevant time.

10 Accordingly, because Petitioner was not in the Western District of Washington when the
11 Petition was filed, and because he failed to name a proper, present custodian within this District
12 as required by §§ 2242-2243, this Court lacks jurisdiction over the Petition and it must be
13 dismissed or transferred.

14 **B. Petitioner Has Not Properly Verified His Habeas Petition**

15 The TRO should be denied for the additional reason that the habeas petition is not properly
16 verified. Habeas petitions must be verified “by the person for whose relief it is intended or by
17 someone acting in his behalf.” 28 U.S.C. § 2242. Local Civil Rule 100(e) permits third parties to
18 verify a petition on behalf of someone in custody, but that person “shall set forth therein the reason
19 why [the petition] is not made and verified by the party in custody, and shall state he or she
20 knows the facts set forth therein, or if upon information and belief, the sources of his or her
21 information shall be stated.” (emphasis added).

22 Here, Petitioner has not signed his petition, and his counsel—who signed the petition—
23 has not verified it pursuant to Local Civil Rule 100(e). *See* Dkt. 1, pg. 12. Moreover, Petitioner
24 has not filed a declaration attesting to the facts relevant to his claims. The absence of a declaration

1 compounds the problematic absence of the verification. *Compare Manjit Singh v. Bondi*, No. C26-
 2 0477-KKE, 2026 WL 586230, at *2 (W.D. Wash. Mar. 2, 2026) (considering petition properly
 3 verified when Petitioner's counsel complied with Local Civil Rule 100(e)), *with Pogolian v.*
 4 *Santacruz*, No. 5:26-cv-00540-SRM-E, 2026 WL 413639, at *3 (C.D. Cal. Feb. 11, 2026)
 5 (denying motion for temporary restraining order when "the facts in the Petition are not verified,
 6 there is no statement addressing 28 U.S.C. § 2242 or [the local civil rule], and the facts in the
 7 exhibits and declaration d[id] not inform th[e] inquiry"). Accordingly, the Court should dismiss
 8 this petition for this additional reason.

9 **C. This Court Lacks Jurisdiction to Enjoin Execution of the Removal Order**

10 None of Petitioner's claims entitle him to a stay of removal, even if he succeeds on
 11 them. To begin, the Court must first determine whether it has jurisdiction to consider Petitioner's
 12 due process claim. *See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-
 13 31 (2007) ("[A] federal court generally may not rule on the merits of a case without first
 14 determining that it has jurisdiction."). In general, a district court may exercise jurisdiction over a
 15 § 2241 habeas petition when the petitioner is in custody and alleges that the custody violates the
 16 Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c); *Maleng v. Cook*, 490
 17 U.S. 488, 490 (1989). Under the jurisdictional bar set forth in 8 U.S.C. § 1252(g), however, "no
 18 court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from
 19 the decision or action by the Attorney General to commence proceedings, adjudicate cases, or
 20 execute removal orders against any alien[.]" 8 U.S.C. § 1252(g).

21 This jurisdictional bar applies "notwithstanding any other provision of law," including
 22 § 2241. *Id.* The Supreme Court has narrowly construed § 1252(g) to apply only to "a limited
 23 subset of deportation claims" arising directly from the three enumerated actions. *Reno v. Am.-*
 24 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).

1 The Ninth Circuit has further clarified that the discretion to execute a removal order
2 includes the discretion to decide when to do so. *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir.
3 2022); see e.g., *Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026 WL 626765, at *5 (W.D.
4 Wash. Mar. 5, 2026); *Aleman v. Bondi*, No. 2:25-CV-02346-JNW, 2026 WL 102457, at *4 (W.D.
5 Wash. Jan. 14, 2026); *Velasco Gomez v. Scott*, No. C25-0522JLR-BAT, 2025 WL 1726465, at
6 *4-6 (W.D. Wash. June 20, 2025); *Martin v. Bondi*, 2:26-CV-00749-DGE, 2026 WL 699354, at
7 *1 (W.D. Wash. Mar. 12, 2026); but see *Yang v. Scott*, 2:26-CV-00469-JNW, 2026 WL 523277,
8 at *2 (W.D. Wash. Feb. 25, 2026).

9 Federal Respondents further note that this matter does not contain any “collateral legal
10 challenges” or similar circumstances as analyzed by courts in this district. See e.g., *Garcia v.*
11 *Noem*, No. 3:25-cv-06008-DGE, 2025 LX 522509, at *5 (W.D. Wash. Nov. 22, 2025).

12 This Habeas Petition challenges indefinite detention, yet Petitioner simultaneously seeks
13 a TRO to halt execution of a concededly valid removal order. That position is inherently
14 contradictory, and it squarely implicates the “whether” and “when” of removal prohibited by
15 § 1252(g). See *Rauda*, 55 F.4th at 777–78; see, e.g., *Saechao*, 2026 WL 626765, at *5. Because
16 the requested relief would directly interfere with ICE’s execution of a final order of removal, and
17 because Petitioner’s removal would moot or otherwise foreclose the asserted due process claims,
18 this Court lacks jurisdiction to grant such relief.

19 **D. Petitioner Has Not Demonstrated a Likelihood of Success on the Merits**

20 ICE detains Petitioner pursuant to 8 U.S.C. § 1231(a), which governs detention during the
21 removal period following a final order. Petitioner does not dispute that he is subject to a final
22 removal order. See Pet. ¶ 1.

23 At bottom, Petitioner’s claim in his habeas petition is prolonged detention without a
24 significant likelihood of removal. See Pet. ¶¶ 1, 33-40 (Petitioner’s two claims for relief state the

1 same claim: indefinite detention under a *Zadvydas* analysis). Petitioner is currently in the process
2 of being removed with a definite removal date to his home country of Mauritania on March 29,
3 2026. Dkt. 10 ¶ 9; *see also* Dkt. 1 ¶ 13 (stating Petitioner is a citizen of Mauritania). Thus,
4 Petitioner's removal is not only significantly likely, but imminent. Further, the Court lacks
5 jurisdiction, for the reasons stated above, on the "whether" and "when" of removal. Any claims
6 directly related to his removal are therefore also barred.

7 Because ICE has concrete travel arrangements for removal, any claim of indefinite
8 detention under *Zadvydas* is foreclosed. If Federal Respondents fail to remove Petitioner, he may
9 seek relief under *Zadvydas*. Accordingly, Petitioner is unlikely to succeed on the merits of this
10 claim. Because Petitioner cannot show a likelihood of success on the merits, or serious questions
11 going to the merits, the Court need not consider the remaining *Winter* factors. *Geo Group*,
12 151 F.4th at 1114.

13 **E. Petitioner Has Not Shown Irreparable Harm.**

14 To obtain a TRO, Petitioner must show that irreparable harm is likely in the absence of
15 relief. *Winter*, 555 U.S. at 20. Petitioner's only alleged irreparable harm relates to his prolonged
16 detention, not removal. Removal ends his detention thus removing any irreparable harm claim.
17 Notably, Petitioner's TRO motion contains little, if any, facts or argument pertaining to
18 irreparable harm. Dkt. 6, pgs. 7-8. While stating that Petitioner faces "real and irreparable
19 injuries," Petitioner fails to identify those injuries. *Id.* Petitioner bears the burden of proving *all*
20 of the *Winter* factors, not some.

21 While there may be consequences to Petitioner as a result of removal, under *Nken*, the
22 burden of removal alone cannot constitute the requisite irreparable injury. *Rojas-Espinoza v.*
23 *Bondi*, 160 F.4th 991, 993 (9th Cir. 2025) (citing *Nken v. Holder*, 556 U.S. 418 (2009)). Rather,
24 a Petitioner seeking a stay of removal must show irreparable harm that is specific to his or her

1 case, as opposed to a reason that would apply equally well to all aliens and all cases, and must
2 show that an irreparable injury is the more probable or likely outcome. Here, Petitioner fails to
3 state any facts beyond that which would apply equally well to all aliens and all cases. *See* Dkts.
4 1, 6. Thus, Petitioner fails to demonstrate irreparable harm here. Indeed, petitioner asserts little,
5 if any, facts demonstrating irreparable harm. *See* Dkt. 6, pgs. 7-8.

6 **F. The Balance of Equities and Public Interest Weigh Against Relief.**

7 The final two *Winter* factors merge when the Government is a party. *Padilla v. Immigr.*
8 *& Customs Enf't*, 953 F.3d 1134, 1141 (9th Cir. 2020). These factors also tip sharply in Federal
9 Respondents' favor. The Government has a strong interest in the enforcement of final orders of
10 removal and in the orderly administration of immigration law under the framework established
11 by Congress. *See* 8 U.S.C. § 1252(g).

12 Granting the requested relief would intrude upon the statutory scheme governing
13 execution and adjudication of removal orders. Where Congress has expressly limited jurisdiction
14 and the Ninth Circuit has applied those limits to similar circumstances, the public interest does
15 not favor judicial intervention. Petitioner has not demonstrated a clear entitlement to release, or a
16 stay of removal. Under *Winter*, the balance of equities and the public interest weigh against the
17 extraordinary relief he seeks.

18 **IV. CONCLUSION**

19 This Court lacks jurisdiction over this matter on multiple, independent grounds. It likewise
20 lacks authority to enjoin execution of Petitioner's removal order, particularly where the habeas
21 petition challenges only the legality of alleged indefinite detention. Indeed, the existence of a
22 concrete and imminent removal forecloses any claim of indefinite detention as a matter of law, as
23 detention pending effectuated removal is neither indefinite nor unlawful. Even if jurisdiction were
24 proper, Petitioner has failed to carry his burden: he has not demonstrated a likelihood of success

1 on the merits, established irreparable harm, or shown that the balance of equities and the public
2 interest weigh in his favor.

3 For these reasons, the Motion for Temporary Restraining Order should be denied.

4 Dated this 27th day of March, 2026.

5 Respectfully submitted,

6
7 s/ Alixandria K. Morris

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18 I certify that this memorandum contains 2,696
19 words, in compliance with the Local Civil Rules.