Chief Judge David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GIA HUY NGUYEN, Petitioner, v. JULIO HERNANDEZ, ACTING FIELD OFFICE DIRECTOR, ICE ERO SEATTLE FIELD OFFICE; DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; ATTORNEY GENERAL OF THE USA; and BRUCE SCOTT,[1] WARDEN, NORTHWEST ICE PROCESSING CENTER, Respondents.	Case No. 2:26-cv-01402-DGE OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER Noted for Consideration: April 30, 2026

I. INTRODUCTION

Petitioner fails to make a clear showing that he is entitled to the extraordinary remedy of a temporary restraining order (TRO) granting his immediate release from immigration custody and enjoining the government from pursuing third country removal.

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

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

First and foremost, Petitioner has failed to establish that this Court has jurisdiction over his new habeas filing because following his release from immigration custody, Petitioner relocated to the Atlanta area and was checking in with the Immigration and Customs Enforcement (ICE) Enforcement and Removal Office (ERO) in Atlanta. He was re-detained in Atlanta and has been detained in that jurisdiction at the Stewart Detention Center under a different custodian. Indeed, Petitioner has filed a habeas petition and motion for a TRO in the District Court for the Middle District of Georgia raising the same issues and seeking the same relief as he raises here. Indeed, that court granted Petitioner's motion for a TRO on April 28, 2026, and has prohibited ICE from removing Petitioner from the Stewart Detention Center until further order of the Court. A detainee seeking a writ of habeas corpus must name as respondent "the person who has custody over him." Here, that person is the Stewart Detention Center Facility Administrator. Thus, the proper jurisdiction for Petitioner's habeas motion for TRO challenging his current detention is the place where he is detained—the Middle District of Georgia —not the Western District of Washington.

Second, even if this Court had jurisdiction over the new habeas case, Petitioner fails to prove that his re-detention and removal to a third country is unlawful. ICE followed this Court's Order granting the first habeas petition and only re-detained Petitioner once they had received diplomatic assurances that he can be removed to Palau and determined that there is a significant likelihood that he may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). Furthermore, by law, the government may remove non-citizens with final removal orders to any "country whose government will accept the alien into that country" when removal to their home nation would be "impracticable, inadvisable, or impossible." 8 U.S.C. §§ 1231(b)(1)(C)(iv), (2)(E)(vii).

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

In sum, Petitioner's moving papers fail to carry his heavy burden to establish entitlement to mandatory injunctive relief that disrupts the status quo by requiring his immediate release from detention pursuant to a final removal order. Also fatal to his request for a TRO, he has not demonstrated an irreparable injury. In fact, if his alleged injury was found to be irreparable, then every habeas claim would satisfy the injury requirement for emergency injunctive relief. Finally, the balance of equities and public interest tilt against granting a TRO.

Furthermore, the TRO sought by Petitioner would inappropriately have this Court, on a time-compressed basis, grant him the ultimate relief that he seeks in his second habeas filing without the requisite showing of facts that clearly favor his position. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits"). As the Ninth Circuit has emphasized, mandatory injunctive relief is "particularly disfavored," and courts should be "extremely cautious" before granting it. *Garcia v. Google Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc); *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994). Such relief is only appropriate when "the law and facts clearly favor the moving party," not merely when there is a likelihood of success

Accordingly, Federal Respondents respectfully request that the Court deny Petitioner's motion for a TRO. This Opposition is supported by the Declaration of Deportation Officer Joseph Carnevale (Carnevale Decl.). Federal Respondents also incorporate herein the facts and arguments set forth in their return and declaration filed in response to Petitioner's previous habeas petition with this Court. *See Nguyen v. Field Office Director*, 2:26-cv-00394-DGE, Dkts. 13-15.

II. FACTS

Petitioner is a native and citizen of Vietnam. Carnevale Decl. at ¶ 4. On October 16, 2024,

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

Petitioner was encountered by a Customs and Border Protection (CBP) agent near Otay Mesa, California. *Id.* After determining that Petitioner had unlawfully entered the United States of America from Mexico at a time and place other than as designated by the Secretary of the Department of Homeland Security, the officer took Petitioner into DHS custody and placed in Expedited Removal proceedings under INA § 235. *Id.*

While in Border Patrol custody, Petitioner did not manifest a fear of return, express an intention to apply for asylum or related protection, express a fear of persecution or torture, or express a fear of return to their country or the country of removal. *Id* at ¶ 6.

On October 22, 2024, Petitioner was transferred to the Otay Mesa Detention Center in Otay Mesa, California. *Id.* at ¶ 7. On October 29, 2024, Petitioner was transferred to the Northwest ICE Processing Center (NWIPC). *Id.* at ¶ 8.

On November 22, 2024, Petitioner claimed fear of return to Vietnam. *Id.* at ¶ 9. On November 25, 2024, Petitioner was referred to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview. *Id.* at ¶ 10. On January 21, 2025, a USCIS asylum officer returned a positive credible fear finding and a Notice to Appear (NTA) was issued charging Petitioner as inadmissible to the United States pursuant to Sections 212(a)(7)(A)(i)(I) and 212(a)(6)(A)(i)(I) of the Immigration and Nationality Act (INA), in that Petitioner is an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General, and in that Petitioner an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* at ¶ 11.

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

On July 30, 2025, an Immigration Judge (IJ) ordered Petitioner removed from the United States. *Id.* at ¶ 12. However, the IJ granted Petitioner withholding of removal to Vietnam. *Id.* Due to the IJ's grant of withholding, ERO began investigating third country removal. *Id.* at ¶ 13.

On December 14, 2025, Petitioner indicated he would be willing to depart to Thailand or Cambodia on his own expense. *Id.* at ¶ 14. On December 27, 2025, Petitioner requested removal to Mexico. *Id.* at ¶ 15.

On February 3, 2026, Petitioner filed a habeas petition in this Court. *Id.* at ¶ 16; *see also Nguyen v. Field Office Director*, 2:26-cv-00394-DGE. On February 26, 2026, this Court issued an order requiring the immediate release of Petitioner and ordered that Petitioner not be re-detained without notice and an opportunity to be heard unless Respondents have evidence detention is authorized under 8 C.F.R. § 241.13(i)(1)(2). *Id.* at Dkt. 20.

On February 26, 2026, Petitioner was released from custody on an Order of Supervision (OSUP). *Id.* at ¶ 18. Petitioner subsequently relocated to the state of Georgia. *Id.* at ¶ 19. On April 23, 2026, Petitioner was taken into ERO custody in Stewart, Georgia, to effectuate removal to Palau pursuant to the Third Country Removal agreement and Palau's acceptance of Petitioner for removal. *Id.* at ¶ 20. Petitioner is presently detained in Stewart, Georgia, in compliance with this Court's order. *Id.* at ¶ 21. Once no prohibitions on removal remain, ICE intends to remove Petitioner to Palau. *Id.* at ¶ 22.

III. LEGAL STANDARD

The standard for issuing a TRO is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

"A plaintiff seeking a preliminary injunction 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*, 555 U.S. at 20. Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action." *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* (internal quotation omitted). "In 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). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley*, 13 F.3d at 1319 (internal quotation omitted). Thus, in a mandatory injunction request, the moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia,* 786 F.3d at 740

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

(emphasis in original).

Here, rather than preserving the status quo, Petitioner seeks mandatory injunctive relief in the form of an order requiring his immediate release and enjoining the government from pursuing third country removal.

IV. ARGUMENT

A. Petitioner fails to establish a likelihood of success on the merits of his motion for TRO because he cannot establish that this Court has jurisdiction over his new habeas case.

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. And because he is seeking mandatory injunctive relief, he must demonstrate that the law and facts clearly favor his position.

Here, Petitioner cannot prove that this Court has jurisdiction over his second habeas filing when he was re-detained in another jurisdiction and is being held in another jurisdiction. Defendants are not the proper custodian. Petitioner's motion for a TRO filed in this Court on April 24, 2026, did not address where Petitioner was re-detained and where he was detained at the time of filing. Dkt. 1. Petitioner has been in Atlanta, Georgia, at all times relevant to his re-detention.

Petitioner was released from custody at the NWIPC pursuant to this Court's Order granting his first habeas petition on February 26, 2026. *See* Carnevale Decl. at ¶ 18. Petitioner subsequently relocated to the state of Georgia. *Id.* at ¶ 19. On April 23, 2026, Petitioner was taken into ERO custody in Stewart, Georgia, to effectuate removal to Palau pursuant to the Third Country Removal agreement and Palau's acceptance of Petitioner for removal. *Id.* at ¶ 20. Petitioner is presently detained in Stewart, Georgia, in compliance with this Court's order. *Id.* at ¶ 21.

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

Indeed, on April 28, 2026, the day after this Court issued an Order adopting the briefing schedule on the TRO (Dkt. 8), Petitioner filed another habeas petition and motion for TRO in the District Court for the Middle District of Georgia. *See Nguyen v. Warden Streeval*, 4:26cv716, Dkts. 1-2. The motion for TRO requests nearly the exact same relief as requested in this TRO:

> RELIEF REQUESTED
>
> a. Enter an immediate temporary restraining order barring Respondents from removing Petitioner to Palau, Vietnam, or any third country and barring transfer outside the Middle District of Georgia pending hearing and further order;
>
> b. Order Respondents within 24 hours to produce the complete revocation, custody review, diplomatic-assurances, and third-country removal record;
>
> c. Order Respondents to show cause within 48 hours why the writ should not issue, why Petitioner should not be restored to release under the prior order of supervision, and why re-detention does not violate 8 C.F.R. section 241.13(i)(2)-(3), due process, and the Western District of Washington judgment;
>
> d. Set expedited briefing and a prompt hearing, or decide the motion immediately if Respondents cannot produce the required record;
>
> e. Require immediate confidential attorney access and prohibit any obstruction of counsel communication; and
>
> f. Waive any bond requirement or set security at zero dollars under Fed. R. Civ. P. 65(c).

Id. at Dkt. 2, pg. 2. The same day, April 28, 2026, the District Court for the Middle District of Georgia granted Petitioner's motion for a TRO in part. *Id.* at Dkt. 3. The court ordered, "To maintain the status quo and protect the Court's jurisdiction while Petitioner's underlying substantive claims are litigated, the Court directs Respondents not to remove Petitioner from Stewart Detention Center until further order of the Court." *Id.*

This case should be transferred to the United States District Court for the Middle District of Georgia pursuant to 28 U.S.C. § 1404(a) or dismissed in its entirety. Petitioner is currently detained at the Stewart Detention Center in Georgia. While this Court may have jurisdiction to deny the motion for TRO, it does not have the authority to direct the actions of the restraining

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

authority in Georgia. *Tapia v. Barron*, No. 2:23-cv-1531, 2024 WL 2946184, at *2 (W.D. Wash. Jan. 12, 2024) (R&R), *adopted by*, 2024 WL 2943939 (W.D. Wash. June 11, 2024); *Ex parte Endo*, 323 U.S. 283, 304-07 (1944). Accordingly, unless the habeas claims are denied and this case dismissed, this case should be transferred. *Jackson v. Warden of the FDC at SeaTac*, No. 2:24 cv 547, 2024 WL 4227765, at *3 (W.D. Wash. Sept. 13, 2024) ("Notwithstanding any limitations on its ability to *grant* habeas relief, this Court retains jurisdiction to *deny* relief.").

Habeas jurisdiction is only proper in the district of confinement. *Doe v. Garland*, 109 F.4th 1188, 1198 (9th Cir. 2024); *Rumsfeld v. Padilla*, 542, U.S. 426, 435 (2004) (finding that the proper respondent "is the warden of the facility where the prisoner is being held," and "not the Attorney General or some other remote supervisory official."); *see also Nguyen v. Field Office Director*, 2:26-cv-00394-DGE, Dkt. 16 (where this Court ordered Petitioner to show cause why he failed to name the proper respondent in his first habeas petition and finding that individuals seeking habeas relief must name their current custodian as respondent).

Under the plain language of 28 U.S.C. § 2242, a detainee seeking a writ of habeas corpus must name as respondent "the person who has custody over him." *Doe*, 109 F.4th at 1198. As concluded in *Padilla*, the "use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner's habeas petition," which is the person "with the ability to produce the prisoner's body before the habeas court." 542 U.S. at 434-35. That person is the Stewart Detention Center Facility Administrator. "The court issuing a writ of habeas corpus must have personal jurisdiction over the custodian; without such jurisdiction, the court lacks the authority to direct the actions of the restraining authority." *Tapia*, 2024 WL 2946184, at *2. This Court lacks personal jurisdiction over Petitioner's current custodian.

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

While courts in this District have found that they may not have jurisdiction to order an out-of-jurisdiction custodian to do anything, they have found jurisdiction to deny the habeas claims and dismiss the petition on the merits. *Id.* at *3; *Jackson*, 2024 WL 4227765, at *3. Under this logic, this Court should only retain jurisdiction if it intends to deny Petitioner's requested relief.

There is ample reason to dismiss Petitioner's motion for TRO because Petitioner's re-detention was lawful. ICE followed this Court's Order granting the first habeas petition and only re-detained Petitioner once they had received diplomatic assurances that he can be removed to Palau, and ICE provided Petitioner with notice of the revocation of his OSUP as well as notice of his third country removal under 8 C.F.R. § 241.13(i)(1)–(2).

In the alternative, this Court may "transfer the action to any other such court in which the action could have been brought if it is in the interest of justice." *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990); *see also* 28 U.S.C. § 1404(a). Because Petitioner is and always has been housed at the Stewart Detention Center following his re-detention, and because he already has a habeas petition and motion for TRO filed in the Middle District of Georgia seeking the same relief, the Court may find that it is in the interest of justice to transfer this habeas case to that District. 28 U.S.C. § 1404(a). Both private and public interests would warrant such a transfer because this would ensure that the deciding court has personal jurisdiction over Petitioner's immediate custodian if any habeas relief is granted. And so that two courts are not simultaneously adjudicating the same matters.

B. Petitioner fails to establish a likelihood of success on the merits of his motion for TRO because he cannot establish that his re-detention and removal to a third country is unlawful.

Because Petitioner is subject to a final order of removal and ICE revoked his OSUP, any protected liberty interest that Petitioner may have in remaining in the community on supervision

UNITED STATES ATTORNEY
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

is addressed by 8 C.F.R. § 241.13. *See Ahmad v. Whitaker*, No. 18-cv-287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019).

The regulation states:

> (i) Revocation of release
>
> (1) Violation of conditions of release. Any alien who has been released under an order of supervision under this section who violates any of the conditions of release may be returned to custody and is subject to the penalties described in section 243(b) of the Act. In suitable cases, the HQPDU shall refer the case to the appropriate U.S. Attorney for criminal prosecution. The alien may be continued in detention for an additional six months in order to effect the alien's removal, if possible, and to effect the conditions under which the alien had been released.
>
> (2) Revocation for removal. The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal.
>
> (3) Revocation procedures. Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13.

Here, there has been a change in circumstances which indicate Petitioner's removal to Palau is likely in the reasonably foreseeable future. ICE has received diplomatic assurances from Palau pursuant to the Third Country Removal agreement and Palau has accepted Petitioner for removal. Carnevale Decl. at ¶ 20. These changed circumstances support Petitioner's current

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

detention as his removal will occur in the immediate future once no prohibitions on removal remain from any Court. Thus, Petitioner's removal is now likely in the reasonably foreseeable future.

At this time, Federal Respondents are unable to confirm whether Petitioner received an informal interview pursuant to 8 C.F.R. § 241.13(i)(3). However, Petitioner cannot demonstrate that the facts here support an actionable injury even if an informal interview was not conducted given that ICE has obtained diplomatic assurances from Palau and Palau has accepted Petitioner for removal. The informal interview is required so a noncitizen may present information showing that there is no significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(3). As Palau already accepted Petitioner and had given diplomatic assurances before Petitioner's re-detention, it is unclear how Petitioner could provide any such information. "Thus, there is no apparent reason that ICE's failure to provide an informal interview should result in [Petitioner's] release." *Ahmad*, 2018 WL 6928540, at *5.

Accordingly, Petitioner was lawfully re-detained following the revocation of his OSUP due to changed circumstances. Petitioner cannot prevail on his request for release from immigration detention pending his removal because his removal is likely in the reasonably foreseeable future.

C. Petitioner has not shown he will suffer irreparable harm absent a TRO.

Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. "The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [TRO]." *Juarez v. Asher*, 556 F. Supp. 3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)).

To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs.*, 844 F.2d at 674 (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197,

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

1201 (9th 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*, 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.

In sum, Petitioner asserts that his detention and its purported effects constitutes irreparable injury. But this irreparable harm argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, No. 12-cv-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012).

"[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. 25-cv-649, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011)).

Accordingly, Petitioner has not made a clear showing that he will be subject to immediate irreparable injury without the requested mandatory injunctive relief.

D. The balance of interests favors the government

It is well settled that the public interest in enforcement of the United States's 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

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700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
206-553-7970

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 unlawful, despite the government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to a valid final removal order that he does not challenge.

V. CONCLUSION

Accordingly, this Court should transfer this case to the Middle District of Georgia or retain jurisdiction and deny Petitioner's requested relief.

DATED this 29th day of April, 2026.

Respectfully submitted,

s/ Kristin B. Johnson
KRISTIN B. JOHNSON, WSBA #28189
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Telephone No. (206) 553-7970
Fax No. (206) 553 4073
Email: kristin.b.johnson@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 4,141 words, in compliance with the Local Civil Rules.