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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

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| **S.F.,**<br><br>Petitioner,<br>v.<br><br>**DREW BOSTOCK; KRISTI NOEM; PAMELA BONDI; TODD LYONS; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOM ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE,**<br><br>Respondents. | Case No. 3:25-cv-01084-MTK<br><br>**RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER** |

To obtain a temporary restraining order, a petitioner must show, among other things, that he is likely to succeed on the merits and that a TRO is in the public interest. Here, Petitioner has been subject to a final order of removal for more than 20 years; because this Court lacks jurisdiction to review ICE's execution of that final order, Petitioner will not succeed on the merits. Petitioner, moreover, has accumulated felony and misdemeanor convictions during his time in the United States; thus, Petitioner is unlikely to show that a TRO delaying the execution of his removal order would be in the public interest.

## STATEMENT OF THE CASE AND FACTS

### I. After an alien is subject to a final order of removal, the Executive Branch has complete discretion to execute the order, including by detaining the alien.

The Immigration and Nationality Act confers authority on the Executive Branch to adjudicate whether an alien should be removed from the country or granted asylum. *See generally* 8 U.S.C. Ch. 12.

The process begins when an immigration officer of the Department of Homeland Security charges an alien as inadmissible. *See* 8 U.S.C. § 1229a(a)(2) (indicating that an alien placed in removal proceedings may be charged with any applicable removability ground). The immigration officer notifies the alien of the charges and statutory provisions violated by issuing the alien a document called a notice to appear.

Removal proceedings begin when the immigration officer files the notice appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court).

The notice to appear indicates when and where the proceedings will be held.

8 U.S.C. § 1229(a)(1)(G). An immigration judge conducts the proceedings for deciding the inadmissibility or removability of an alien. 8 U.S.C. § 1229a(a)(1).

If the immigration judge sustains a charge of removability or inadmissibility in the notice to appear, the alien may file an application for relief. The grant of an application for relief would result in the ability to lawfully remain in the United States. One such application is a Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture.

Throughout an alien's removal proceedings, the alien may be represented by counsel at no expense to the government. 8 U.S.C. § 1229a(b)(4)(A). He also has the opportunity to examine the evidence against him, to present evidence on his own behalf, and to cross-examine the government's witnesses. 8 U.S.C. § 1229a(b)(4)(A). He may request asylum, withholding of removal, or withholding of removal under regulations implementing the Convention Against Torture, which would allow him to remain and work in the United States.

An alien who is dissatisfied with an immigration judge's decision may appeal to the Board of Immigration Appeals ("BIA"). After an adverse BIA decision, the alien may seek Article III judicial review in a federal court of appeals. 8 U.S.C. § 1252.

### II. Petitioner has been subject to a final order of removal for more than 20 years.

Petitioner, a citizen of Iran, entered the United States with a visa in August 1999 and overstayed it. Declaration of Mihaela Hammer ¶ 4. ICE's predecessor, the Immigration and Naturalization Service, placed Petitioner in removal proceedings.

*Id.* ¶ 5. Petitioner filed an application for asylum. ECF 1 ¶ 24.

An immigration judge entered an order of removal and denied the asylum application. Hammer Decl. ¶ 6. Petitioner appealed to the BIA, which dismissed the appeal, on January 2, 2004, rendering the order administratively final. *Id.* ¶ 7. Petitioner did not seek judicial review.

ICE attempted but failed to obtain a travel document to Iran for Petitioner. *Id.* ¶ 9. In April 2006, ICE released Petitioner on an order of supervision, which has required him not to commit crimes while under supervision. *Id.* ¶ 11.

### III. Since his order of removal became final, Petitioner has committed felonies and misdemeanors.

Petitioner was convicted in Oregon state courts of delivering controlled [redacted] He has served prison time and probation. *Id.*

### IV. ICE revoked Petitioner's order of supervision and took him into custody in preparation for his removal.

On June 24, 2025, ICE detained Petitioner and issued him a notice of revocation of release explaining that Petitioner violated the release terms of his order of supervision with his theft conviction, for which he was arrested on August 3, 2023. *Id.* ¶ 13. ICE intends to seek a travel document to Iran and is assessing Petitioner's case for potential third-country removal. *Id.* ¶ 15.

In a Form I-213, Record of Deportable/Inadmissible Alien, ICE officers noted that Petitioner's order of removal became final in January 2004. *Id.* ¶ 14.

The officers recited Petitioner's criminal history. *Id.* The officers noted that "because of the seriousness of the criminal activities, [Petitioner] will be transported to the Northwest Immigration Processing Center for repatriation arrangements." *Id.*

## STANDARD

The standards for a TRO and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). "To obtain a preliminary injunction, a plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (en banc) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)).

## ARGUMENT

### V. The four factors weigh against Petitioner.

#### A. Petitioner will not succeed on the merits because this Court lacks jurisdiction over the execution of his final order of removal.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the Immigration and Nationality

Act, Congress provided in the newly enacted 8 U.S.C. § 1252(g) that,

> Except as provided in this section and notwithstanding any other provision of law, 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 under this Act.

8 U.S.C. § 1252(g) (1996). In 2005, in the REAL ID Act, Congress amended section 1252(g) to clarify that the statute's proscription against jurisdiction applies to habeas petitions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310–11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, section 1252(g) now provides that,

> Except as provided in this section and notwithstanding any other provision of law, (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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 under this chapter.

8 U.S.C. § 1252(g) (2017).

The IIRIRA and REAL ID Act amendments to the INA reflect Congress's desire to "streamline immigration proceedings" and to "effectively limit all aliens to one bite of the apple with regard to challenging an order of removal." *Singh v. Gonzales*, 499 F.3d 969, 976-77 (9th Cir. 2007) (quoting *Bonhometre v.Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005)). "Under these amendments, individuals who seek to challenge an order [of removal] may do so, but only as part of a petition for review in the appropriate court of appeals, as provided under section 1252."

In particular, section 1252(b)(9) provides that,

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter *shall be available only in judicial review of a final order under this section*." Except as otherwise provided in this section, *no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.*

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) ("Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal ….").

This body of law deprives the Court of jurisdiction to release Petitioner from immigration detention or to otherwise review the execution of his final order of removal. In *AADC*, the Supreme Court held that section 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (emphasis in original). Thus, a district court is "without jurisdiction to hear … a claim, even if the claim is for a short stay while [Petitioner] seeks additional administrative remedies." *Diaz-Amezcua v. Johnson*, No. C14-1313 MJP, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015). Here, however, Petitioner is attempting to do just that: to obtain review of DHS's decision to execute a removal order.

### B. Because of Petitioner's criminal history, the public interest weighs in favor of allowing the removal process to proceed.

During his time in the United States, Petitioner has endangered public safety, as evidenced by his numerous convictions, many of them for serious felonies. The Executive Branch has the authority to determine whether aliens have the fitness to remain in the country. ICE acted in the public interest when it detained Petitioner because of his most recent criminal conviction. The public interest would be served by his removal.

### C. Because Petitioner can continue with his motion to reopen if he is removed, irreparable harm and the balance of equities weigh against him.

Although he does not expressly argue it, Petitioner seems to suggest that he would suffer irreparable harm and that the equities weigh in his favor because he wants to file a motion to reopen his removal proceedings due to a change of conditions in Iran. *See* ECF 1 ¶¶ 37.

As Petitioner acknowledges, though, any motion to reopen would be considered by the BIA, not this Court. *Id.* ¶ 34. Nor does Petitioner contend that removal from the United States would prevent him from pursuing his motion to reopen. Indeed, a motion to reopen "shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the [BIA]." 8 C.F.R. § 1003.2(f).

Finally, the equities favor the government's decision to execute a final removal order. Petitioner has known of the removal order for more than 20 years;

his eventual removal is not a surprise.

## CONCLUSION

This Court should deny the motion for a TRO.

DATED this 1st day of July 2025.

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