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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Qian SUN,

Petitioner-Plaintiff,

v.

Ernesto SANTACRUZ JR., Acting Field Office Director of Los Angeles Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security, Kristi NOEM, Secretary, U.S. Department of Homeland Security; and Pamela BONDI, Attorney General of the United States;

Defendants-Respondents.

No. 5:25-cv-02198-JLS-JC

RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION [DKT. 3]

I. INTRODUCTION

In February 2017, an Immigration Judge ordered Petitioner Qian Sun removed from the United States. *See* Dkt. 3-2, pp. 12-13. That removal order was deferred to China, however, under the Convention Against Torture upon the Immigration Judge's finding that Petitioner would be tortured if removed to China, which the Board of Immigration Appeals affirmed. *Id.* at pp. 12-15. Since June 2017, Petitioner has been under an Order of Supervision ("OSUP"). *Id.* at 18-20.

As part of the terms of the OSUP, Petitioner has been required to report for check-ins with ICE annually. *See id.* at 27. Petitioner's most recent check-in was on September 25, 2024, at which time the next check-in was set for August 27, 2025, at the San Bernardino ICE Field Office. *Id.* Now, less than a week before that check-in and even though she is not in custody, Petitioner has filed a Petition for a Writ of Habeas Corpus and the instant *ex parte* TRO application prohibiting Respondents from arresting her at the August 27, 2025 check-in. *See generally* Dkt. 1 & 3. Both her habeas petition and this *ex parte* application are based on nothing more than Petitioner's asserted fear that she *may* be re-arrested at the August 27, 2025 check-in. *See* Dkt. 3 at 8.[1]

In her application, Petitioner concedes that she is subject to a final removal order stemming from her prior federal criminal conviction and deferral of removal grant[2] but seeks an order prohibiting Respondents from re-arresting her. At bottom, however, it appears that what Petitioner is seeking through this application is a prospective challenge based on her speculative belief of what ICE *may* do. Specifically, Petitioner suggests that

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[1] Despite the check-in being set nearly a year ago, nowhere in the *ex parte* application does Petitioner explain why she waited until less than one week before the August 27, 2025 check-in to bring this action or seek *ex parte* relief. Indeed, there was ample time for her to seek relief on regular time had she wished to do so.

[2] As Petitioner concedes, she pled guilty to 21 U.S.C. § 952, 960, Importation of Methamphetamine, and sentenced to 78 months in federal prison. *See* Dkt. 3-2, at 35, ¶ 23; *see also United States v. Sun*, 3:11-cr-03208-LAB, Dkt. 31 (Judgment in a Criminal Case) & Dkt. 1 (Indictment) (charging Petitioner with knowingly and intentionally importing 34.98 pounds of methamphetamine).

ICE will re-arrest her at the check-in and that she may "quite possibly [be removed] to a third country to which she has absolutely no connection whatsoever." While such a concern is understandable, a TRO cannot be granted based on hypothetical conduct nor is a habeas petition the proper vehicle for Petitioner, who is not in custody, to raise her claims on this record.

Accordingly, the Court should deny Petitioner's *ex parte* TRO Application for multiple reasons. *First*, this Court lacks jurisdiction. Petitioner's claim is not a cognizable habeas claim, as it seeks to enjoin her arrest and/or require a pre-detention hearing, not a release from custody. *Second*, 8 U.S.C. § 1252(g) strips federal courts of jurisdiction over "any cause or claim" arising from the execution of removal orders, which Petitioner's claims plainly do.

Third, Petitioner also has not shown a likelihood of success on the merits of her claims. Petitioner has a final removal order. Petitioner has no due process right to additional procedures, including a pre-detention hearing, regarding her removal. Her detention is statutorily authorized by 8 U.S.C. § 1231(a)(6) to execute her removal from the United States. She will receive sufficient process during any such future detention via the Post Order Custody Regulations in 8 C.F.R. § 241.4, which set forth specific criteria that should be weighed in considering whether to recommend further detention beyond the removal period set in 8 U.S.C. § 1231 in addition to 8 C.F.R. § 241.13 and current DHS Policy. *See* Dkt. 3-2 at 63-64. There is no basis to conclude that Petitioner is entitled to any additional process during or before any hypothetical detention to execute her valid, final order of removal and certainly she is not entitled to prospective relief on an *ex parte* basis based on a generalized concern of what ICE may or may not do. Therefore, this Court should deny her *ex parte* application and dismiss her Petition.

II. STANDARD OF REVIEW

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain injunctive relief, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id*. at 20. Because Petitioner seeks a mandatory injunction here, the already high standard is "doubly demanding." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Thus, Petitioner must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed. *Id*. Further, a mandatory preliminary injunction will not issue unless extreme or very serious damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

III. ARGUMENT

A. Petitioner's Claim Is Not a Cognizable Habeas Petition Because It Does Not Seek Release from Custody

As an initial matter, Petitioner's claim is not a cognizable habeas petition because she is not seeking release from custody. The Court should therefore deny this *ex parte* application and dismiss the habeas petition on this basis alone.

Habeas relief is an appropriate request when an individual is detained and requesting release from that detention. U.S. CONST. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) ("The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody "); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody."). An individual does not need to be in actual physical custody to seek habeas relief; the "in custody" requirement may be satisfied where an individual's release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted "custody" for habeas purposes). But Petitioner does not challenge her current custody. Even if Petitioner were to meet the "in custody" requirement because she is subject to certain conditions of release—such as reporting annually to an ICE office—this habeas petition does not purport to challenge *that* custodial arrangement or secure her release from any *present* "custody." Accordingly, habeas jurisdiction is inappropriate.

B. Petitioner's Claims Run Afoul of the INA's Jurisdiction Stripping Provisions

Petitioner is currently subject to a final removal order; she is not merely in removal proceedings. To the extent she contests the decision to enforce it via arrest, that runs afoul of 8 U.S.C. § 1252(g), where Congress provided that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999).

Here, Petitioner's claims arise from her speculative concerns about the execution of her removal order, which is barred by Section 1252(g). Indeed, her petition seeks to require ICE to provide her with additional procedures not authorized or required by statute or regulation prior to her removal or even any arrest to effectuate her removal.

Furthermore, Sections 1252(a)(5) and 1252(b)(9) of the INA also bar review in this Court. By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute explicitly excludes review via "section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "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" to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. *Id.* (emphasis added).

Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all" claims arising from deportation proceedings to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. Under Ninth Circuit law, "[t]aken together, §[§] 1252(a)(5) and [(b)(9)] mean that any issue— whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and 1252(b)(9) channel review of all claims, including policies-and- practices challenges, through the PFR process whenever they 'arise from' removal proceedings").

Insofar as Petitioner seeks to effectively block her arrest and removal, her claims are precluded by these jurisdiction stripping provisions.

C. Petitioner Has Not Shown That Due Process Compels Providing a Special Hearing Prior To Detention for Any Reason While She Is Subject To A Final Removal Order

Petitioner makes a variety of arguments as to why she should not be subject to re-arrest and detention, most of which center on an Immigration Judge's decision to release her on an OSUP. As noted above, Petitioner plead guilty to 21 U.S.C. § § 952, 960, Importation of Methamphetamine, and sentenced to 78 months in federal prison. *See* Dkt. 3-2, at 35, ¶ 23; *see also United States v. Sun*, 3:11-cr-03208-LAB, Dkt. 31 (Judgment in a Criminal Case). Petitioner is thus subject to mandatory detention pursuant to her final removal order, issued on February 13, 2017. However, given that her removal order was deferred under the Convention Against Torture upon an Immigration Judge's finding that Petitioner would be tortured if removed to China, she has been released from detention pursuant to an OSUP. But Petitioner conflates the OSUP with being free from removal at any future time. Indeed, the OSUP was the result of the **deferral** of her final order of removal. At all times, however, Petitioner was still subject to removal, including to "a country with a government that will accept the alien into the country's territory…." *See* 8 U.S.C. § 1231(b)(1)(C).

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231. Requiring a pre-detention hearing for individuals with final removal orders would impair law enforcement, including because it would increase the risk of flight. When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). *After that time*, a noncitizen may request release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Furthermore, when a valid removal order is issued, there is not a protected liberty interest in remaining free from detention by imposing a special process that prevents the government from electing to revoke a supervised release. The government is authorized to revoke such release pursuant to 8 CFR § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

At bottom, Petitioner does not have a right to prevent her re-arrest and detention pursuant to the same process that applies to other noncitizens subject to a final removal order. However, following such speculated re-arrest and detention, she would still be able to seek whatever relief she believed appropriate just as any other noncitizen in the same circumstances would have. To that end, there are procedural safeguards already in place.

For example, 8 C.F.R. § 241.13(i)(1)-(3) lists when an OSUP may be revoked – such as a change in circumstances – and the procedures for doing so. Included in those procedures is the requirement that the alien be "notified of the reasons for revocation" and "an opportunity to respond to the reasons for revocation[."] As part of the response, the alien may "submit any evidence or information that he or she believes shows there is no significant likelihood that he or she be removed in the reasonably foreseeable future…." *Id.*, at subd. (i)(3). This directly cuts against Petitioner's claim that she is entitled to additional process beyond what is available to all similarly situated noncitizens under an OSUP. Indeed, Petitioner has not shown that her speculative re-arrest and detention pursuant to her final removal order would be inconsistent with law. Indeed, 8 C.F.R. § 241.13 sets forth procedures for the revocation of an OSUP.

D. Petitioner Has Not Shown She Will Suffer Irreparable Harm Absent a Mandatory Preliminary Injunction

Petitioner has also not demonstrated that she will suffer irreparable injury absent a temporary restraining order. To show irreparable harm, she must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. 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 suggests only that she has "fear" that she may be re-arrested at her August 27, 2025 check-in. But aside from her speculative concerns, she points to no circumstances that are unique to her nor does she provide any evidence. For example, she does not argue that she has received any unusual communications from ICE (such as notice that her OSUP has been revoked) nor that she has violated the terms of her OSUP such that arrest would appear apparent. Instead, she cites two news articles (from June 2025) and her attorney's "knowledge of similarly situated clients of his firm who were re-arrested and re-incarcerated without any notice or process" as the **entire** basis for her speculative concern. Dkt. 3 at 8. Such does not entitle Petitioner to the extraordinary relief she seeks and her argument "begs the constitutional questions presented in [her] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019).

Moreover, Petitioner's speculative "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). She thus faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody or under an OSUP, and she has not shown extraordinary circumstances warranting a mandatory preliminary injunction. Indeed, if she was re-arrested and her OSUP revoked, she would still be entitled to process under 8 C.F.R. § 241.4 as well as that provided in the memorandum she includes with her application. *See* Dkt. 3-2 at 63-64.

E. 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 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.

VI. CONCLUSION

For all the above reasons, the Respondents respectfully request that the Court deny Petitioner's *ex parte* TRO Application and that the Petition be dismissed.

Dated: August 22, 2025

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondents, certifies that the memorandum of points and authorities contains 2,952 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 22, 2025

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