

1 BILAL A. ESSAYLI
Acting United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
DANIEL A. BECK
4 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
5 RANDY HSIEH (Cal. Bar No. 312087)
Assistant United States Attorney
6 Federal Building, Suite 7516
300 North Los Angeles Street
7 Los Angeles, California 90012
Telephone: (213) 894-6585
8 Facsimile: (213) 894-7819
E-mail: Randy.Hsieh@usdoj.gov
9

Attorneys for Federal Respondents

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 Juan Carlos Hernandez Hernandez,
15
16 Petitioner,

17 v.

18 Department of Homeland Security;
Kristi NOEM, in her official capacity as
19 Secretary, Department of Homeland
Security, et al.,

20 Respondents.
21
22
23
24
25
26
27
28

No. 8:25-cv-01928-SVW-MAA

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER JUAN
CARLOS HERNANDEZ
HERNANDEZ'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

**[Filed Concurrently with the
Declarations of Randy Hsieh and Gabriel
P. Cordova]**

Honorable Stephen V. Wilson
United States District Judge

**OPPOSITION TO *EX PARTE* APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

I. INTRODUCTION

Respondents hereby oppose Petitioner Juan Carlos Hernandez Hernandez's *ex parte* application for temporary restraining order ("Application") (Dkt. 4). Petitioner is a citizen and native of Mexico. After Petitioner illegally entered the United States in July 2013, U.S. Immigration and Customs Enforcement ("ICE") issued Petitioner a notice and order of expedited removal, and removed him accordingly to Mexico.

Petitioner then illegally returned to the United States again, however. After U.S. Customs and Border Protection ("CBP") agents detained Petitioner on August 20, 2025, he was taken to a local hospital because of his complaints of a leg injury, and then subsequently transferred into ICE custody. On September 2, 2025, Petitioner was removed to Mexico again, in coordination with the Mexican government, pursuant to a reinstatement of the order of expedited removal that had been issued in 2013.

The Application should be denied for three reasons. First, the relief that Petitioner seeks in his Application and in his underlying Petition for Writ of Habeas Corpus ("Petition"), that he be "immediately released from [Respondents'] custody[.]" is moot as he is no longer in the United States, and also no longer in the Respondents' custody. Second, ICE properly removed Petitioner in accordance with an order of expedited removal and in coordination with the Mexican authorities. Third, the Fourth Amendment violations Petitioner alleges stemming from the August 20, 2025 encounter with CBP are not a basis for a habeas petition, both because the arrest itself is a different matter from the basis for subsequently keeping Petitioner in custody and because 8 U.S.C. § 1252(g) deprives courts of jurisdiction to review removal proceedings.

For these reasons, and those set forth below, the Court should deny Petitioner's request for relief and dismiss this action in its entirety.

///

///

II. STATEMENT OF FACTS

A. Petitioner's 2013 Order of Expedited Removal

Petitioner is a native and citizen of Mexico. Declaration of Randy Hsieh ("Hsieh Decl.") ¶ 4, Exh. C. On July 3, 2013, he was contacted and interviewed by a U.S. Border Patrol agent after illegally entering the United States at Otay Mesa, California. *Id.* Petitioner reported having previously been "arrested, detained, deported, or excluded" by ICE. *Id.* ¶ 5, Exh. D. He stated that he was coming to the United States to work, but that he did not have any fear of returning to Mexico or that he would be harmed if he returned. *Id.* ¶ 6, Exh. E. ICE then issued an order of expedited removal on the basis that Petitioner was inadmissible to the United States. *Id.* ¶ 4, Exh. C. He was removed on July 4, 2013. *Id.* ¶ 2, Exh. A.

B. August 2025 Detention and Reinstatement of Expedited Removal

On August 20, 2025, Petitioner was contacted and detained by federal agents while he was working at a car wash in Huntington Beach, California. Petition for Writ of Habeas Corpus ("Petition") ¶ 16. Petitioner complained of a leg injury incurred during his arrest, and he was taken and admitted to a local hospital.

On August 28, 2025, Petitioner filed his underlying Petition and Application. Dkt. 1, 4. Petitioner served the Application on September 2, 2025. Dkt. 7. On August 30, 2025, ICE informed Petitioner that under Section 241(a)(5) of the Immigration and Naturalization Act, he is "removable as an alien who has illegally reentered the United States after having been previously removed" and thus "subject to removal by reinstatement of the prior order." Hsieh Decl. ¶ 2, Exh. A. Petitioner declined to make a statement contesting the determination of his removability. *Id.*

On September 1, 2025, Petitioner was interviewed by official from the Mexican consulate and plans were made in coordination between ICE and the consulate of Petitioner's repatriation. Declaration of Gabriel P. Cordova ¶¶ 6-8.

///

///

On September 2, 2025, Petitioner was removed from the United States through the San Ysidro Port of Entry, where he was received by Mexican authorities who also stamped his ICE Form I-216 acknowledging his removal. Hsieh Decl. ¶ 3, Exh. B.

III. ARGUMENT

A. The Court Lacks Jurisdiction to Entertain Petitioner's Action under 8 U.S.C. § 1252.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims challenging the decision to take him into custody. Accordingly, Petitioner is unable to show a likelihood of success on the merits.

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*, or [3] *execute removal orders against any alien under this chapter*.”¹ 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title.”² Except as provided in § 1252, courts “cannot entertain challenges to the enumerated executive branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

The Ninth Circuit has held that Section 1252(g) bars *Bivens* claims premised on the claim that the government wrongfully took the alien into detention as a “false arrest” in violation of the Fourth Amendment. *See Sissoko v. Rocha*, 509 F.3d 947 (9th Cir. 2007)

¹ Much of the Attorney General's authority has been transferred to the Secretary of Homeland Security and many references to the Attorney General are understood to refer to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

² Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title” after “notwithstanding any other provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 (alleged violation of Fourth Amendment via arrest did not support *Bivens* claims).

2 Section 1252(g) also bars district courts from hearing challenges to the *method* by
3 which the Secretary of Homeland Security chooses to commence removal proceedings,
4 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
5 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning
6 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision
7 to take [plaintiff] into custody and to detain him during removal proceedings”).

8 **B. Even Assuming Jurisdiction, Petitioner Fails to Meet the High Bar for**
9 **Injunctive Relief.**

10 1. Petitioner is unable to show a likelihood of success on the merits.

11 a. *Petitioner’s Habeas Petition is Moot and He Was Removed from*
12 *the United States in Accordance with Procedure.*

13 While “[d]eportation from the United States after filing a habeas petition does not
14 necessarily moot a petitioner’s claim,” such an ongoing petition must “continue to present
15 a live controversy after the petitioner’s release or deportation” and “there must be some
16 remaining ‘collateral consequence’ that may be redressed by success on the petition.”
17 *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007) (citing *Spencer v. Kenma*, 523 U.S.
18 1, 7 (1993)). For example, “where a petitioner only requested a stay of deportation,
19 his habeas petition was rendered moot upon his deportation” *Id.*

20 Here, Petitioner’s Petition is completely moot because of his removal to Mexico.
21 He is not in the Respondents’ custody, and there is no “release” left to order. All the relief
22 he seeks in the Petition and the Application has been inapplicable since his repatriation to
23 Mexico on September 2, 2025. As for the “[c]ompensatory” and “[p]unitive damages” he
24 seeks for the purported injuries he sustained, such tort damage allegations are not a basis
25 for a habeas petition as described below, and do not fall within habeas jurisdiction.

26 ///

27 ///

28 ///

b. *Alleged Fourth Amendment Violations Are Not a Basis for a Habeas Petition.*

Courts in this District have noted that “claims of false arrest and/or excessive force” in connection with an arrest may not properly be asserted in a habeas petition, or as part of a habeas petition. *Robinson v. Hartley*, 2013 WL 866074, at *1 (C.D. Cal. March 6, 2013) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 498-500(1973)); *Quezada-Montero v. Metropolitan Correctional Facility*, 2008 WL 4552955, at *2 (C.D. Cal. October 8, 2008) (citing *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979)).

Here, a significant portion of Petitioner’s factual allegations (*see* Petition ¶¶ 16-21) and First through Fourth Causes of Action (*see id.* ¶¶ 32-56) relate to alleged Fourth Amendment violations, specifically the nature of his arrest and the alleged physical injury he suffered, which he contends resulted from the excessive use of force in his arrest. But the circumstances of his initial arrest by CBP, even if they were allegedly unlawful, would not establish that Petitioner was not thereafter properly detained by ICE as a removable alien under immigration law. Considering the foregoing authorities, such claims and allegations are not proper for a habeas petition and should be dismissed.

2. Petitioner Fails to Establish that He Will Likely Suffer Irreparable Harm Absent the Issuance of a Preliminary Injunction.

The Supreme Court’s “frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21–22 (2008). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our 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.” *Id.* Conclusory or speculative allegations are not enough to establish a likelihood of irreparable harm. *Herb Reed Enters., LLC v. Florida Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013); *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (“Speculative injury does not constitute irreparable injury sufficient to warrant granting a

preliminary injunction.”); *Am. Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (finding irreparable harm not established by statements that “are conclusory and without sufficient support in facts”).

Petitioner was removed from the United States and repatriated to Mexico on September 2, 2025. He is not presently in federal custody, and there is no release from such custody to order. Plaintiff thus cannot establish he will suffer any irreparable harm absent the issuance of a TRO.

IV. CONCLUSION

Petitioner’s request for relief via the Application and the Petition should be denied.

Respectfully submitted,

Dated: September 4, 2025

BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Randy Hsieh
RANDY HSIEH
Assistant United States Attorney
Attorneys for Federal Respondents

LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Federal Defendants certifies that this brief contains 1,770 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 4, 2025

/s/ Randy Hsieh
RANDY HSIEH