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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

M.T.M.,

Petitioner,

v.

TONYA ANDREWS, in her official
capacity as Facility Administrator of
Golden State Annex Detention Facility,

MOISES BECERRA, in his official
capacity as Acting Field Office Director of
the Immigration and Customs
Enforcement, Enforcement and Removal
Operations, San Francisco,

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security; and

PAM BONDI, in her official capacity as
Attorney General of the United States,

Respondents.

No. 1:25-CV-01094-JLT-SKO

**PETITIONER'S RESPONSE PURSUANT
TO ORDER ECF 12**

INTRODUCTION

Petitioner M.T.M., by and through his undersigned counsel, hereby responds in accord with the Court's Order, ECF No. 12. M.T.M. respectfully requests an Order:

1. Clarifying the Court's Order not to remove M.T.M. from the United States remains in effect until either this Court or another Court hears M.T.M.'s emergency motion for a temporary restraining order; and either
2. Finding jurisdiction is properly exercised in this District because Petitioner actually may have been in the District at the time notice of filing was served and filing was attempted; or in the alternative,
3. Transferring this action to the Central District of California because the Court determined Petitioner was in that District at the time notice of filing was served and filing was attempted.

ARGUMENT

I. Temporarily Enjoining Removal from the United States Remains Necessary

There are contested issues of fact here as to jurisdiction, and the stakes for M.T.M. could not be higher as he fears potentially fatal persecution and torture if removed to Ghana or certain other third countries without mandatory statutory and constitutional protections. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach . . . in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel."). Accordingly, it is not only appropriate but necessary for the Court to clarify its August 28, 2025 Order (ECF Dkt. 6) to remain in effect as to its directive not to remove M.T.M. from the United States until either this Court or another Court hears M.T.M.'s emergency motion for a temporary restraining order.

Following the Court's entry of its Order today, M.T.M.'s counsel promptly asked Respondents' counsel to "confirm it is your understanding that the judge's order not to remove our client from the U.S. remains in effect at least until the case is transferred or otherwise disposed of?" No response has been received at the time of this filing, heightening the need for an emergency

1 order.

2 As this Court noted in its August 28, 2025 Order, courts have “‘express authority under the
3 All Writs Act to issue such temporary injunctions as may be necessary to protect its own
4 jurisdiction.’” ECF Dkt. 6 (quoting *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966)). Since factual
5 questions of jurisdiction at the time of filing Petitioner’s habeas petition and TRO motion are still in
6 dispute – and Respondents have not yet confirmed that they will not illegally remove Mr. M.T.M. from
7 the United States prior to the orderly resolution of questions of jurisdiction and venue – issuing an order
8 temporarily enjoining the removal of Mr. M.T.M. is warranted and appropriate.

9 If procedurally necessary, the Court should consider this request an emergency motion for
10 a temporary restraining order. Respondents will not suffer any prejudice if such relief is granted.
11 Given the merits of M.T.M.’s habeas petition and emergency motion for temporary restraining
12 order and this Court’s own consideration of the issues in its August 28, 2025 Order, M.T.M. easily
13 demonstrates likelihood of success on the merits or, at least, serious questions going to the merits
14 [are] raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies*
15 *v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Absent such relief, M.T.M. stands to suffer
16 irreparable harm that “is clear and simple: persecution, torture, and death. It is hard to imagine harm
17 more irreparable.” *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 391 (D. Mass. Apr. 18, 2025). Moreover,
18 it “is well established that the deprivation of constitutional rights ‘unquestionably constitutes
19 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
20 *Burns*, 427 U.S. 347, 373 (1976)). And “it is always in the public interest to prevent the violation
21 of a party’s constitutional rights.” *Id.* (internal citation omitted).

22 To be sure, Respondents should not be given the opportunity to irreparably deprive M.T.M.
23 of his statutory and constitutional rights just because Respondents repeatedly denied M.T.M. of
24 access to counsel, concealed his whereabouts, and refused to acknowledge his fear-based claims.
25 ECF No. 9. See, e.g., *Khalil v. Joyce*, 771 F. Supp. 3d 268, 273 (S.D.N.Y. 2025) (“To preserve the
26 status quo and ensure that Khalil gets an opportunity to have his claims heard in due course, the
27 Court’s Order barring the Government from removing Khalil, see ECF No. 9, shall remain in effect
28 unless and until the transferee court orders otherwise.”). See also *Rumsfeld v. Padilla*, 542 U.S.

426, 454 (2004) (Kennedy, J., concurring) (an exception to filing a petition in the district of confinement might be warranted “if there is an indication that the Government’s purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention.”).

II. Jurisdiction Is a Factually Contested Issue

First, this Court should consider M.T.M.’s time of filing to be 12:58 PM PT, August 28, 2025 because that is when Respondents were provided with full copies of his habeas petition and emergency motion for temporary restraining order and M.T.M.’s counsel attempted to e-file but could not because of nationwide technical issues. ECF No. 9. L.R. 134 contemplates deeming a filing timely “subject to a technical failure.” Here, M.T.M.’s counsel demonstrated considerable diligence in repeatedly attempting to e-file in several ways around 12:58 PM PT and asking the helpdesk for assistance by phone and email. ECF No. 9. When asked if an alternative method of filing would be accepted by the court due to the emergency nature of our filing, the helpdesk clerk pointed to L.R. 134 indicating that filings would be considered timely in the event of a technical outage. *Id.* A helpdesk clerk subsequently confirmed there was a nationwide technical issue with the e-filing portal. *Id.* Accordingly, under the circumstances, M.T.M.’s filing should be considered timely as of 12:58 PM PT, August 28, 2025.

Second, “[g]enerally, a person challenging his detention through a habeas petition is required to file that petition in the federal district where he is detained at the time of filing.” *Khalil*, 771 F. Supp. 3d at 273. The “Supreme Court articulated and applied these ‘longstanding’ rules — known as the ‘district of confinement’ and ‘immediate custodian’ rules.” *Id.* (citing *Padilla*, 542 U.S. at 449). In doing so, the Supreme Court considered both “the statutory language of the federal habeas statute and its previous decision in *Wales v. Whitney*” to confirm this “‘longstanding practice.’” *Id.* (citing *Padilla*, 542 U.S. at 435). And “the *Padilla* Court” clarified that “that a petitioner’s relocation after a ‘properly file[d]’ habeas petition does not deprive a district court of jurisdiction.” *Id.* at 279.

Judge Furman’s Order in the Southern District of New York in *Khalil v. Joyce* is on point.

1 There, unbeknownst to his counsel because of lack of proper notice, the Government moved Khalil
2 from SDNY to Newark, New Jersey in order to promptly effectuate transfer to a Louisiana ICE
3 Processing Facility in the Western District of Louisiana—just as here. *Id.* at 275–277. Khalil’s
4 counsel filed a habeas petition in SDNY because they believed he was present in SDNY. *Id.* Turns
5 out he was in Newark, New Jersey at the time of filing, and hours later, transferred to Louisiana.
6 *Id.* The Court rejected the Government’s motion to transfer the case to the Western District of
7 Louisiana and instead transferred the action to the District of New Jersey where Khalil was located
8 at the time of filing. *Id.* at 273–74. Further, as cited above, the Court clarified its temporary Order
9 “barring the Government from removing Khalil . . . shall remain in effect unless and until the
10 transferee court orders otherwise” in order to “preserve the status quo and ensure that Khalil gets
11 an opportunity to have his claims heard in due course” even though the Court found it lacked
12 jurisdiction given Khalil’s whereabouts at the time of filing. *Id.* Given the clear factual and legal
13 similarities here, the Court should adopt the same principles of law. *See, also, Ozturk v. Trump*,
14 777 F. Supp. 3d 26, 30 (D. Mass. 2025) (holding similarly in denying transfer to Western District
15 of Louisiana because detainee was in Vermont at time of filing even though shortly thereafter
16 moved to Louisiana); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *3
17 (S.D.N.Y. Aug. 26, 2025) (holding the “Court retains jurisdiction even though Petitioner is now
18 detained in the MDC,” and ordering the Government to transport detainee back to the District).

19 Here, it is a contested issue of fact as to where M.T.M. was at the operative time of filing,
20 12:58 PM PT. M.T.M. told counsel he left Bakersfield, California (this District) at approximately
21 11:00 AM PT and arrived in Victorville, California (Central District of California) at approximately
22 3:00 PM PT. ECF No. 9. It is entirely possible that M.T.M. was still in the Eastern District at the
23 time of operative filing. Yes, Respondents contest that factual sequence, but it is a disputed factual
24 issue nonetheless. Moreover, M.T.M. has raised a credibility issue with relying on the “ICE-ERO’s
25 Enforcement, Arrest, and Detention Module” for determining the precise whereabouts of a detainee
26 at a given time. *See ECF No. 11*. For example, it appears Respondents’ counsel relied on that
27 module in informing M.T.M.’s counsel that M.T.M. boarded a flight to Louisiana around 2:15 PM
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1 PT yesterday. ECF No. 9. Respondents' witness now avers that information was incorrect.¹ See
2 ECF No. 11. Further, Respondents' witness only avers to "approximate" times in his declaration.
3 *Id.* That ambiguity also suggests the whereabouts of M.T.M. at the operative time of filing are
4 undetermined as of yet.

5 **III. Jurisdiction Properly Lies Either Here or in the Central District of California**

6 Given the contested issues of fact core to the jurisdictional analysis, M.T.M. respectfully
7 requests that the Court continue to exercise jurisdiction and hold its August 28, 2025 Order remain
8 in effect while it seeks definitive evidence from the Parties. If the Court determines there is no
9 reasonable dispute of fact as to the District M.T.M. was in at the time of filing, then it is certain
10 that M.T.M. was in the Central District of California at the time, not the Western District of
11 Louisiana.² Accordingly, in the alternative, the Court should transfer this action to the Central
12 District of California.

13 **CONCLUSION**

14 The Court should grant M.T.M.'s requested relief and issue an Order:

- 15 1. Clarifying the Court's Order not to remove M.T.M. from the United States remains in
16 effect until either this Court or another Court hears M.T.M.'s emergency motion for a
17 temporary restraining order; and either
18 2. Finding jurisdiction is properly exercised in this District because Petitioner actually may
19 have been in the District at the time notice of filing was served and filing was attempted;
20 or in the alternative,
21 3. Transferring this action to the Central District of California because the Court
22 determined Petitioner was in that District at the time notice of filing was served and
23 filing was attempted.

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27 ¹ ICE also incorrectly informed M.T.M.'s counsel that M.T.M. had been put on a flight to Ghana on August 27, 2025
on the apparent basis of the ICE-ERO tracking system. See ECF No. 9. Obviously, that information was wrong as well.

28 ² There is also no colorable argument that M.T.M. was en route to the Western District of Louisiana at the time
M.T.M.'s filings were docketed. According to Respondents, he was allegedly on a flight to Florence, Arizona.

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Dated: August 29, 2025

Respectfully submitted,

/s/ Sean Lai McMahon

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Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and L.R. 65-1, I hereby certify that on August 29, 2025, this was filed in the Eastern District of California, which effectuates service on the U.S. Attorney's Office.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner

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