BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney (Cal. Bar No. 204496)
Chief, Complex and Defensive Litigation Section
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2574
E-mail: Daniel.Beck@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

M.T.M., Petitioner, v. TONYA ANDREWS, et al. Respondents.	No. 2:25-cv-08208-SRM-PD **RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

The Court's August 30, 2025 "Order Regarding Emergency Motion for Temporary Restraining Order" [Dkt. no. 19] ordered that the Respondent show cause in writing why Petitioner's motion for a temporary restraining order [Dkt. no. 2] (the "TRO Motion") should not be granted. Respondents hereby oppose the TRO Motion.

Although entitled and styled a "habeas petition," the Petition does not seek habeas relief—release from custody. Rather it essentially seeks an order enjoining Petitioner's removal to a third country without notice. That is not a habeas claim, and it does not fall within habeas jurisdiction. *See Dep't of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020) (defining habeas jurisdiction and rejecting argument that improper removal is habeas remedy). Habeas relief is available to challenge only the legality or duration of confinement. *See Pinson v. Carvajal,* 69 F.4th 1059 (9th Cir. 2023) (complaints about conditions of confinement are not cognizable in habeas because they do not seek release as remedy). The Petition argues that the Petitioner seeks habeas corpus relief (Petition, ¶ 9), but the case it cites for that proposition—*Zadvydas v. David*, 533 U.S.679 (2001)–involved an actual claim for release from detention on the grounds that it was allegedly indefinitely prolonged. It did not involve an attempt to bar removal to specific nations. Opposing removal is the opposite of a habeas claim. Habeas jurisdiction is not a mechanism for litigating generalized immigration grievances, even if serious ones.

Consistent with that fundamental habeas jurisdiction problem, Petitioner seeks his ultimate relief by means of a TRO. Specifically, Petitioner seeks a TRO (1) barring his transfer to another district (and compelling his return); and (2) seeking a bar on removal to a third-country without sufficient notice (he is a native of Senegal).

The TRO motion's two components should be denied.

First, the request for a TRO barring transfer is devoid of merit. The Court's asserted justification for such an order to date has been that it would preserve jurisdiction. *See, e.g.* Dkt. no. 19. But what jurisdiction could that be, specifically, and how would it possibly be preserved by an order barring detainee transfer? If some unspecified form of jurisdiction would be lost by transfer, then this Court of course would have already lost that jurisdiction via the Petitioner's prior transfer to the Western District of Louisiana—and it could not be re-acquired by ordering him transferred back. In reality, no such "loss of jurisdiction" at all is threatened by detainee transfer. It is well-established that habeas jurisdiction attaches when a petition is properly filed against the proper respondents. It is not lost by later transfer to other districts in the immigration context, any more than it is lost by transfer in criminal incarceration contexts.

Even more fundamentally, the Attorney General may not be barred from transferring detainees to other districts in the United States, nor does Petitioner establish that he would likely suffer any genuinely irreparable harm if he were so transferred. To the contrary, authority is clear that the Attorney General has discretion to make such transfers of detainees to other districts, which are not a 'harm' that is wrongfully inflicted on such detainees. Finally, a temporary restraining order—i.e. an order requiring the government to take mandatory action outside the courtroom—is an extreme and drastic remedy. It requires truly *dire* justification, not greater convenience. Just as there is no authority to order a prisoner incarcerated in a specific district pursuant to a habeas petition, neither is the TRO standard met by asserting that in an immigration detention context everything is entirely different and transfer may be enjoined.

To some degree this point is admittedly moot because the damage is largely already done—the Court has already ordered Petitioner returned to California by September 4, 2025. However, the routinized issuance of injunctive orders requiring and barring transfer of detainees inflicts significant harm, and it threatens to imposing chaos on government operations and immigration enforcement more generally.

Second, Petitioner is a recent arrival from Senegal into the United States, who has obtained an IJ order barring his removal back to Senegal. He now raises the concern that he will now instead be removed to a third county. He asks the Court to impose a multi-part notice and objection procedure, by TRO, in advance of such a removal. This request for a TRO should be denied for being attempt to enjoin the government to follow the law. Furthermore, Petitioner's requested multi-part notice procedure is too convoluted and obstructive. While giving bare advance notice of intended removal to a third-country may not seem overly burdensome, Petitioner's proposed TRO also seeks to impose a second stage process requiring the Respondents to subsequently give him notice and time sufficient to enable him to try to re-open his old immigration proceedings. That would effectively block the enforcement of a final removal order via endless procedural delays ordered in District Court—not in Immigration Court—which would be improper.

Accordingly, this Court should deny the TRO Application.

II. STANDARD OF REVIEW

The standard for issuing a TRO and a preliminary injunction are substantially identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A TRO is "an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where the government is a party, the balance of equities and the public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"A preliminary injunction can take two forms." *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.,* 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Id.* (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir. 1988)). In contrast, a "mandatory injunction 'orders a responsible party to take action.'" *Id.* at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)). "A mandatory injunction 'goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)).

Finally, A TRO or PI is intended to preserve the status quo until the case can be judged on the merits. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

III. ARGUMENT

A. Petitioner's Request for a TRO Barring His Transfer From this District Should Be Denied

Petitioner fails to carry his demanding burden to establish entitlement to the extraordinary remedy of a TRO constraining the Attorney General's discretion to decide where to place detained immigrants. Furthermore, he does not and cannot establish that he is likely to suffer irreparable harm caused by such a transfer.

1. The law and facts do not clearly favor Petitioner because the relief sought by his TRO Motion is not a proper habeas claim

The TRO relief that Petitioner seeks via his Petition—to be detained solely in the Eastern District of California, and to be granted notice prior to removal to a third country—is not a true habeas claim. A writ of habeas corpus provides for the release of somebody who is unlawfully held in custody. Habeas jurisdiction does not extend to grievances about conditions of confinement, nor to complaints about immigration proceedings. It is well established that complaints about conditions of confinement are not a basis for habeas relief. *See Pinson v. Carvajal,* 69 F.4th 1059 (9th Cir. 2023). There is no writ of habeas corpus for "preferred district of detention within the United States." Nor is a desire to avoid removal to a country where one fears persecution a habeas claim. *See Dep't of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020) (rejecting claim that habeas provides a right to remain in foreign country as remedy).

But even if the Petition did advance a habeas claim, it certainly would not support barring transfer to other districts for detention. The government may detain aliens pending removal proceedings under 8 U.S.C. § 1226(a) and removable aliens under § 1231(a). And the government must detain aliens who are inadmissible or removable under certain provisions. *See id.* §§ 1226(c)(1), 1231(a)(2)(A). Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain aliens. The INA precludes review of "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General . . . ." 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain Petitioners. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction).

In *Van Dinh*, the noncitizen-plaintiffs were incarcerated at a facility in Colorado, where they were notified of the "distinct possibility" that they would be transferred to another facility. *See* 197 F.3d at 429. Plaintiffs filed a Bivens class action complaint requesting injunctive relief restraining all noncitizen transfers until local counsel had an opportunity to interview their clients and injunctive relief restraining transfer outside the area of those noncitizens with an established attorney-client relationship. *See id.* There, the Tenth Circuit concluded that "the district court had no jurisdiction to review the Attorney General's discretionary decision to transfer and detain appellants in another INS facility under § 1252(a)(2)(B)(ii)" and thus no Bivens class action was available. *Id.* at 435. In reaching this conclusion, the Court found that "[t]he Attorney General is mandated to 'arrange for appropriate places of detention for [noncitizens] detained pending removal.'" *Id.* at 433 (citing 8 U.S.C. § 1231(g)(1)). "The Attorney General's discretionary power to transfer [noncitizens] from one locale to another, as [he or] she deems appropriate, arises from this language." *Id.* Thus, it is "apparent that a district court has no jurisdiction to restrain the Attorney General's power to transfer [noncitizens] to appropriate facilities by granting injunctive relief in a Bivens class action suit." *Id.*

Moreover, in *Rios–Berrios*, the petitioner was apprehended in California, charged with entry without inspection, and moved to Florida for a deportation hearing that was scheduled to begin effectively five working days from the time of his apprehension. *See* 776 F.2d at 860-61. The immigration judge twice continued the hearing for a total of two working days, first after the petitioner stated that he needed time to find an attorney and again after being informed that the petitioner had called a friend who had been in contact with an attorney and bail bondsman. *See id.* After the immigration judge granted the continuances, he also advised that the hearing would proceed with or without counsel. *See id.* When the petitioner appeared without counsel, there was no inquiry regarding the petitioner's expressed wish to be represented by counsel and the hearing went forward. *See id.* The Ninth Circuit found a violation of the petitioner's right to be represented by counsel of his own choice at his own expense. *See id.* at 862-63. However, the Ninth Circuit clarified that there was no right to block his transfer to another district:

> We wish to make ourselves clear. We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide. We merely say that his transfer there, combined with the unexplained haste in beginning deportation proceedings, combined with the fact of petitioner's incarceration, his inability to speak English, and his lack of friends in this country, demanded more than lip service to the right of counsel declared in statute and agency regulations, a right obviously intended for the benefit of aliens in petitioner's position.

Id. at 863 (citations omitted).

Accordingly, judicial intervention is not proper with respect to the government's decision about where to detain Petitioner.

2. <u>Petitioner also fails to show that he will likely suffer serious irreparable harm by being transferred</u>

Having been in this District for a couple of hours during his transfer from the Eastern District of California to Louisiana, Petitioner also has not demonstrated that he will suffer irreparable injury if he is transferred to another district while detained. To show irreparable harm, he 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).

As a threshold matter, if the Eastern District of California had jurisdiction when his Petition was filed, then any later transfer would do nothing to detract from that. A writ of habeas corpus operates not upon the prisoner, but upon the prisoner's custodian. *See Braden v. 30th Jud. Circuit Ct. of Kentucky*, 410 U.S. 484, 494–495 (1973). Jurisdiction over a § 2241 petition attaches when a petitioner files a petition in his district of confinement and names his custodian. *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change."). *See, e.g., Acosta v. Doerer*, No. 5:24-cv-01630-SPG-SSC, 2024 WL 4800878, at *4 (C.D. Cal. Oct. 24, 2024) (holding that the district court maintained jurisdiction even after immigration detainee petitioner was transferred from one federal facility to another); *Rincon-Corrales v. Noem*, No. 2:25-cv-00801-APG-DJA, 2025 WL 1342851, at *2 (D. Nev. May 8, 2025) ("[O]nce a petitioner has properly filed a habeas petition in the district of confinement, any subsequent transfer does not strip the filing district of habeas jurisdiction."). In no event would prohibiting district transfer somehow save or preserve jurisdiction. If it did, the jurisdiction putatively "lost" by such transfer would need to be identified. Furthermore, the Petitioner here was already transferred out of this district prior to any order barring transfer. If it could be lost, then it would have been lost.

In sum, Petitioner fails to identify any specific serious and irreparable harm that would arise from his potentially being detained in another district versus within this district. Telephone calls and mail are the primary means by which detainees access their counsel while in detention facilities; they do not depend upon the specific district of detention, and even if they did, that would be a conditions of confinement issue, not a claim for release. Furthermore, Petitioner's claim for entitlement to pre-removal notice is not dependent upon live testimony at a hearing—and even if it were, nothing would preclude such testimony from being presented by Zoom. Even *true* civil habeas petitions by inmates are normally resolved without live testimony in court.

Finally, the TRO is also not narrowly tailored. A transfer to San Diego would not be an "irreparable harm." Nor would the Northern District of California. Yet the order issued here bars any such transfer. In contravention of law, it essentially confers upon an immigration detainee a "veto right" against their non-preferred detention location. That trivializes the requirements for proving entitlement to exigent injunctive relief.

Accordingly, Petitioner's request for a TRO barring his transfer should be denied. While to some degree the Court's September 2, 2025 order has already inflicted the harm complained of by Respondents here (and cannot be reversed in that respect), the legal problems with the routine issuance of such orders are severe and pervasive.

B. Petitioner's Request for a Prospective TRO Prohibiting Any Potential Removal to a Third Country Should Be Denied

Petitioner's request for the Court to issue a TRO prohibiting his removal to a third country without an elaborate notice and objection procedure similarly fails, although at least in this context—unlike the district transfer context discussed above—the Supreme Court has recognized a Due Process concern. At its outset, however, this request is speculative, insofar as Petitioner assumes he would be removed to an undesignated third country without any notice and opportunity to be heard.

It is improper to prospectively enjoin the government to follow the law. *See Elend v. Basham*, 471 F.3d 1199, 1209 (11th Cir. 2006) (court cannot fashion an injunction that abstractly commands the Secret Service to obey the First Amendment, noting that injunction requiring party to do nothing more specific than 'obey the law' is impermissible."); *E.E.O.C. v. AutoZone, Inc.*, 707 F.3d 824, 841 (7th Cir. 2013) ("An obey-the-law injunction departs from the traditional equitable principle that injunctions should prohibit no more than the violation established in the litigation or similar conduct reasonably related to the violation."); *see, e.g. Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 767 (4th Cir. 1998) (an "obey the law" injunction "impermissibly subjects a defendant to contempt proceedings for conduct unlike and unrelated to the violation with which it was originally charged"); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1201 (11th Cir. 1999) ("As this injunction would do no more than instruct the City to 'obey the law,' we believe that it would not satisfy the specificity requirements of [Federal Rule of Civil Procedure] 65(d) and that it would be incapable of enforcement.").

Furthermore, the TRO Motion seeks to impose a multi-stage notice and objection procedure whereby the Petitioner would first be given 10 days to raise a fear-based claim relative to written notice of prospective removal to a third country, and then the Respondents "must move to reopen Petitioner's removal proceedings." If the Respondents do not find such reasonable fear, Petitioner suggests they must then be ordered via TRO to give Petitioner "a meaningful opportunity, and a minimum of fifteen days" for Petitioner "to seek reopening of his immigration proceedings." *Id.* A TRO in District Court providing for a last-ditch potential reopening of immigration proceedings in Immigration Court is not a proper way to block a prospective future enforcement of a removal order. The Attorney General's execution of a final removal order cannot be blocked by TRO, at the very end of the process, so the Petitioner may *then* take some unspecified time to try to reopen his immigration proceedings. *See* 8 U.S.C. 1252(g).

C. 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.

Furthermore, while Petitioner argues that the public faces little harm from a TRO, that is incorrect. The routinized issuance of TROs blocking detainee transfer imposes havoc on federal immigration operations. As the circumstances of this case evidence, attempting to bar and reverse normal transfers within the United States via judicial TROs that must then be attempted to be coordinated with ongoing complex transportation movements imposes major problems. Issuing a TRO is not a minor or simple issue that may be done for the greater convenience of the petitioner or the Court—particularly when the enjoined party is as large and complex as the federal government.

Finally, with respect to Petitioner seeking a TRO requiring notice prior to any removal to a third country, the amount and type of such notice matters greatly when assessing the burdens. Just giving advance notice of an intended removal to a third country may not appear very burdensome. But if an elaborate and lengthy civil procedure is *also* ordered after such notice—essentially a lengthy automatic stay issued by a District Court *outside of an immigration court*—it would essentially function to indefinitely block removal in District Court. Imputing such a mechanism via a habeas petition would impose a significant harm on the public interest, and it would threaten to run afoul of the jurisdictional limitations imposed by 8 U.S.C. § 1252(g).

IV. CONCLUSION

The Respondents respectfully request that Petitioner's *ex parte* TRO Motion be denied.

Dated: September 3, 2025

Respectfully submitted,

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/ *Daniel A. Beck*
DANIEL A. BECK
Assistant United States Attorney

Attorneys for Respondents

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 3,515 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 3, 2025

/s/ *Daniel A. Beck*
DANIEL A. BECK
Assistant United States Attorney

Attorneys for Respondents