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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' RESPONSE TO ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

I. INTRODUCTION

The Court's August 30, 2025 "Order Regarding Emergency Motion for Temporary Restraining Order" [Dkt. no. 19] ordered the Respondents to show cause in writing why Petitioner's motion for a temporary restraining order [Dkt. no. 2] (the "TRO Motion") should not be granted. A hearing was held on September 9, 2025 [Dkt. 33]. As Respondents explained at that hearing, however, they had already been issued several orders in this action [Dkt. nos. 6, 19, 25] providing the requested relief of barring the removal of the Petitioner, and then requiring his return to CD Cal or ED Cal. From the government's perspective, those successive preliminary orders could not readily be reversed at that juncture, after-the-fact, and almost two weeks after the Petition was filed, by a hearing on whether to issue a TRO.

The same *ex post facto* issue exists with the OSC re: Preliminary Injunction. The TRO order issued on September 11, 2025 [Dkt. 34] includes notice and objection procedures that essentially mirror the scope of the District Court's preliminary injunction issued in the class action case of *Dep't of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025), which addresses the degree of notice required prior to a non-citizen's removal to a third country under a final removal order. While the TRO order states that it expires on September 25, 2025—a true TRO duration—its terms nonetheless impose injunctive relief significantly broader in scope and duration, without being tailored for the TRO context. Specifically:

> Following notice, Petitioner must be given a meaningful opportunity, and **a minimum of ten (10) days** to raise a fear-based claim for protection under the Convention Against Torture prior to removal. If Petitioner demonstrates "reasonable fear" of removal to the third country, Respondents must move to reopen Petitioner's removal proceedings. If Petitioner is not found to have demonstrated a "reasonable fear" of removal to the third country, Respondents must provide a meaningful opportunity, and a minimum of **fifteen (15) days**, for Petitioner to seek reopening of his immigration proceedings.

TRO Order, at p. 11 [Dkt. 34] (bold emphasis in original).

The TRO order thus already affirms and repeats the broader scope of a true preliminary injunction order, like that issued by the District Court in *D.V.D.*, consistent with the ultimate relief that Petitioner had requested in his Prayer for Relief. Indeed, the Hon. Judge Staton recently issued a preliminary injunction on this same subject, granting a similar scope of relief, in the case of *Nadar Nadari v. Pamela Bondi, et al.*, 2:25-cv-07893-JLS-BFM, Dkt. no 12 (citing *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 393 (D. Mass. 2025).

Accordingly, it is difficult to see what can be accomplished at this late procedural juncture by responding to the OSC on whether a preliminary injunction should issue. And while the duration of the required notice period set forth above is relatively lengthy, it would not seem (in an individual case, as opposed to a class action) to impose a severe burden. Nonetheless, the Respondents will make two brief related points.

II. Habeas Jurisdiction Is Premised on Asserting Unlawful Detention, and the Petition Here Does Not Allege That Petitioner is Unlawfully Detained

Petitioner has not sought release from detention via his Petition. He has opposed being removed to a third country without advance notice, stating that he fears this would subject him to persecution. *See* Petition, Prayer for Relief. Habeas claims, however, are not directed at *maintaining lawful custody* by blocking an unlawful release from custody. Such a claim might have legal merit for various reasons, but it would be the opposite of a habeas claim. While Petitioner has cited cases that pair unlawful detention claims with requests for relief from an associated threatened unlawful removal, that is different than *a bare claim to block removal* via imposing an advance notice and objection process. Illustrating the problem, Petitioner has now already obtained nearly all of his Petition's requested relief via the TRO and its three preceding orders (apart from their duration); *cf.* Petition, at p. 26 (Prayer for Relief) [Dkt. 1] with the TRO [Dkt. no 19]. Via successfully filing a petition for a writ of habeas corpus, Petitioner is now back in detention in the Eastern District of California. Habeas jurisdiction should not be expanded to the point of paradoxically inverting the historical writ into its opposite.

While some District Court decisions have sought to broaden the scope of habeas, the Ninth Circuit was fairly clear about its scope in the recent case of *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023), explaining that:

> Thus, the history of habeas corpus demonstrates why release from confinement is the only available remedy for claims at the writ's core and, consequently, informs our analysis about how to classify petitions that allege release is the only available remedy. Release is the only available remedy—and thus a claim is at the core of habeas—if a successful petition demonstrates that the *detention itself* is without legal authorization.

Pinson, 69 F.4th at 1070 (italic emphasis in original). As the Ninth Circuit explained, while various claims have been found to fall within habeas, "[i]n all these circumstances, however, the petitioner has demonstrated that custody *was not authorized to begin* with, which is a legal defect that cannot be solved by ordering damages or declaratory relief or an injunction." *Id.* (italic emphasis in original). This delineation of habeas jurisdiction is consistent with *See Dep't of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959 (2020) (defining the scope of historical habeas jurisdiction).

Federal courts indeed have jurisdiction pursuant to 28 U.S.C. § 2241(c)(3) to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States." But no such claim has been pled here by the Petition. And while Petitioner argues that whether a claim is cognizable in habeas is not jurisdictional, it is difficult to square that contention with the Ninth Circuit's affirmation of the dismissal of claims that do not fall within habeas jurisdiction, finding that they must instead be brought as civil rights actions. *See Pinson*, 69 F.4th 1076 ("Because Sands's claims lie outside the historic core of habeas corpus, we conclude the district court properly found it lacked jurisdiction to hear Sands's petition.").

Alternatively, Petitioner's supplemental briefing suggests he has finally acquired a claim for indefinite detention pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), which would give him a claim for unlawful detention sufficient to seek a writ of habeas corpus. There are two overarching problems with that contention, however. First, such a claim was not pled in his actual Petition, which is the operative pleading, and which states the claims that the Respondents have already been enjoined pursuant to. Second, *Zadvydas* does not provide that a claim of unconstitutionally prolonged postremoval confinement "accrues" after six months, but rather that the government at that point becomes obligated, if challenged, to produce evidence rebutting an alien's provision of good reason to believe they will not be removed in the foreseeable future:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701. The noncitizen therefore "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*[1]

To be clear, these defects are not incurable. Respondents acknowledge that the rapid pace of this action, and its abrupt and disjointed initial transfer from another District, has made it unusually challenging for the Petitioner and Respondents alike to litigate. And as the Ninth Circuit discussed in *Pinson*, if the claims asserted do not fall within the historical core of habeas, a court could either dismiss the habeas action (as the Ninth Circuit affirmed in *Pinson*) or alternatively convert the defective petition into a true civil action, as an act of judicial discretion. The problem thus is not that Petitioner could not possibly file and serve a pleading that articulated a sufficient legal basis for

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[1] As the converse of this same point, some courts have found that *Zadvydas* claims may be pled before the six months elapse, noting the evidentiary nature of the Supreme Court's guidance. *See Trinh v. Homan*, 466 F. Supp. 3d 1077 (C.D. Cal. 2020). It would be very difficult to state a sufficiently plausible factual basis at an earlier juncture, however, and so such claims are typically dismissed without prejudice until at least six months of postremoval confinement have elapsed.

seeking an advance notice of removal remedy, but rather that he did not do so, and yet has generally already obtained the injunctive remedy sought by his Prayer for Relief, apart from its duration. While that may reflect the generally *ex parte* nature of the proceedings to date, the problem should be resolved at the preliminary injunction phase.

III. Any Injunctive Relief Should Be Coordinated With the *D.V.D.* Non-Opt Out Class Action Case That Petitioner Appears to be a Member Of

Petitioner appears to be a member of the non-opt out *D.V.D.* class action, which asserts true civil claims (i.e. not just habeas claims) for injunctive and declaratory relief based on the potential removal of non-citizens to third countries without sufficient notice. In March 2025, three plaintiffs instituted the *D.V.D.* case as a putative class action suit challenging their threatened third country removals. The District Court issued a TRO and then a preliminary injunction. *See D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. April 18, 2025). The First Circuit affirmed the preliminary injunction.

The Supreme Court then stayed that preliminary injunction, however, pending disposition of the appeal and a potential petition for writ of certiorari, presumably because it determined the *D.V.D.* plaintiffs were not likely to prevail on the merits—but the memorandum itself does not specify the reason for the stay. *See D.V.D.*, *supr*a, 145 S. Ct. 2153 (Mem). The lengthy dissent discusses various potential reasons why the majority might have granted the stay, some of which go to the merits of the certified class of plaintiffs' legal claim and its jurisdictional basis (which would go to the merits of Petitioner's individual claim here), and some of which are instead limited to the propriety of granting nationwide injunctive relief (a class action remedy limitation that would not go to the merits of Petitioner's individual claim here).

That issue cannot be resolved here, of course, but any preliminary injunctive relief issued in this proceeding should be coordinated and delimited so that it does not potentially conflict with rulings issued by the First Circuit or Supreme Court on the same legal issues in the preexisting class action that Petitioner is a mandatory member of.

IV. CONCLUSION

While its terms appear potentially excessive if generalized to other cases, the notice duration and process required by the TRO is already in place, and the government has not contended that the Petitioner should not receive advance notice of third-country removal; indeed it provided such notice here, although its sufficiency was complained of by Petitioner. Accordingly, the preliminary dispute appears largely resolved already.

Dated: September 19, 2025

Respectfully submitted,

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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 1,841 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 19, 2025

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