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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MARC STEIGLEDER, an individual,

*Petitioner*,

v.

KRISTI NOEM, Secretary, Department of Homeland Security; PAM BONDI, Attorney General; IMMIGRATION AND CUSTOMS ENFORCERMENT; and TODD LYONS, Acting Los Angeles Field Office Director, Immigration and Customs Enforcement

*Respondent(s)*.

Case No. 2:25-cv-09048-FLA-BFM

**RESPONDENTS' OPPOSITION TO PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 4]**

Honorable Fernando L. Aenlle-Rocha
United States District Judge

# RESPONDENTS' OPPOSITION TO *EX PARTE* TRO APPLICATION

## I. INTRODUCTION

The Court should deny Petitioner's *ex parte* Motion for a Temporary Restraining Order (the "TRO Application") [Dkt. 4].

Petitioner is a non-citizen subject to removal by virtue of his past conviction for a controlled substance offense. *See* INA § 212(a)(2)(A)(i)(II). He has been placed into removal proceedings and is being detained consistent with statutes authorizing detention during the pendency of removal proceedings. *See* 8 U.S.C. § 1226(a).

Petitioner has not shown that his detention is in violation of his due process rights. To the contrary, his referral to ICE in connection with the adjudication of his N-400 application is consistent with USCIS Policy Memorandum 602-0187, dated February 28, 2025.[1] This memorandum states that USCIS will issue NTAs for individuals with pending N-400s that may be approvable but who are also deportable, and that USCIS will refer cases involving criminal conduct, arrests, or convictions to ICE for enforcement action determinations.

Moreover, even though Petitioner does not wish to be placed into removal proceedings or detained, he will have opportunities before the Immigration Court to seek prompt release on bond or otherwise challenge his removal in connection with those proceedings. In essence, Petitioner here seeks to use habeas to circumvent the normal bond hearing process. But there is not a due process justification for that.

Accordingly, this Court should deny the instant TRO Application because no extraordinary emergency relief is warranted.

## 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

[1] This Memorandum is publicly accessible at https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

(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. U.S.*, 612 F.2d 1112, 1114 (9th Cir. 1980)).

## III. STATEMENT OF FACTS

Petitioner is a forty-eight-year-old native and citizen of Germany. Dkt. 1 at ¶14; Declaration of Deron Young ("Young Decl."), ¶ 3. On January 10, 1986, Petitioner was admitted to the United States as a lawful permanent resident. Young Decl. at ¶ 4.

On September 26, 1995, Petitioner was convicted of unlawfully causing fire of property in violation of California Penal Code § 452(d). *Id.* at ¶ 5.

On September 19, 2003, Petitioner was convicted of unlawful marijuana cultivation under California Health and Safety Code § 11358. *Id.* at 6.

On May 9, 2011, Petitioner applied for admission as a lawful permanent resident at Los Angeles International Airport. *Id.* at ¶ 7.

On September 8, 2011, U.S. Customs and Border Patrol served Petitioner with a

Notice to Appear (NTA), charging him with removability under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA) for being convicted of a crime involving moral turpitude and section 212(a)(2)(A)(I)(II) for being convicted of an offense involving a controlled substance. *Id.* at ¶ 8. These two charges of removability stem from Petitioner's conviction for unlawful marijuana cultivation. *Id.*

On February 12, 2013, the Immigration Judge sustained removability under INA § 212(a)(2)(A)(I)(II). *Id.* at ¶ 9.

On September 10, 2013, the Immigration Judge ordered Petitioner removed to Germany after he failed to apply for any form of relief. *Id.* at ¶ 10.

On November 21, 2018, Petitioner received a gubernatorial pardon for his convictions for unlawfully causing fire of property and unlawful marijuana cultivation. *Id.* at ¶ 11.

On February 5, 2019, Petitioner filed a motion to reopen to apply for cancellation of removal for certain permanent residents based on the gubernatorial pardon of his convictions. *Id.* at ¶ 12. In the motion to reopen, Petitioner's current attorney admitted that the gubernational pardon did not alter the fact that Petitioner remains removable for being convicted of a controlled substance offense. *Id.*

On April 18, 2019, the Immigration Judge granted Petitioner's motion to reopen removal proceedings. *Id.* at ¶ 13.

On or about April 6, 2022, Petitioner's current attorney requested ICE exercise its prosecutorial discretion to dismiss proceedings. *Id.* at ¶ 14.

On May 23, 2023, ICE and Petitioner filed a joint motion to dismiss proceedings without prejudice. *Id.* at ¶ 15.

On May 23, 2022, the Immigration Judge dismissed proceedings without prejudice. *Id.* at ¶ 16.

On November 24, 2023, Petitioner filed an application for naturalization with U.S. Citizenship and Immigration Services (CIS). *Id.* at ¶ 17. On September 15, 2025, CIS referred Petitioner to ICE for enforcement action based on his pardoned conviction for unlawfully causing fire of property and unlawful marijuana conviction. *Id.* at ¶ 18.[2] On September 23, 2025, ICE took enforcement action and arrested Petitioner. *Id.* at ¶ 19.

On the same date, ICE served Petitioner with a Notice to Appeal ("NTA") charging him with removability under INA § 212(a)(2)(A)(i)(II) for being convicted of a controlled substance offense, placing him in removal proceedings. *Id.* at ¶ 20.

Petitioner is currently in custody at Adelanto ICE Processing Center. *Id.* at ¶ 21.

## IV. ARGUMENT

### A. Petitioner's Request for Immediate Release Should be Denied.

Petitioner's request for immediate release should be denied because his present detention is statutorily authorized and does not violate his due process rights.

#### 1. Petitioner's Detention is Statutorily Authorized.

8 U.S.C. § 1226 provides for arrest and detention of non-citizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain a non-citizen during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release a non-citizen if the non-citizen demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A non-citizen can also request a custody redetermination (i.e., a bond hearing) by an Immigration Judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the non-citizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release a non-citizen on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But

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[2] The referral to ICE was pursuant to the USCIS NTA policy memo dated Feb 28, 2025, which is publicly available at: https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf

regardless of the factors IJs consider, a non-citizen "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

Here, Petitioner was referred to ICE by CIS based on his September 19, 2003, conviction for unlawful marijuana cultivation under Cal. Health and Safety Code § 11358. Young Decl. at ¶ 18. Petitioner remains subject to removability for being convicted of a controlled substance offense, notwithstanding his gubernatorial pardon. *Matter of Suh*, 23 I&N Dec. 626, 627 (BIA 2003) ("Other removable offenses, such as a controlled substance violations under section 237(a)(2)(B), certain firearm offenses under section 237(a)(2)(C), and violations of protection under section 237(a)(2)(E)(ii), are similarly not covered by the pardon waiver of section 237(a)(2)(A)(v) of the Act.") Petitioner concedes this fact in the habeas petition. *See* Dkt. 1 at ¶ 19.

Moreover, on September 23, 2025, ICE served Petitioner with a NTA charging him with removability under INA § 212(a)(2)(A)(i)(II) for being convicted of a controlled substance offense, placing him in removal proceedings. *Id.* at ¶ 20. As such, Petitioner is now in removal proceedings and is subject to detention. The immigration court is an adequate means for him to seek release on bond and/or to challenge removal.

2. Petitioner's Detention Does Not Violate his Due Process Rights.

The habeas petition and TRO Application argue that Respondents have violated Petitioner's due process rights by placing him into removal proceedings and detaining him without notice of a change in circumstances. *See* Dkt. 1 at ¶ 39; Dkt. 4 at p. 4. In essence, Petitioner suggests that the government, having once dismissed his prior removal proceedings without prejudice, cannot initiate removal proceedings again without a specific advance showing pursuant to a special procedure. There is not legal support for that position, and Petitioner cites no relevant authority for it.

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. § 1226(a).

Petitioner primarily points to his perception of unfairness surrounding the CIS referral to ICE as demonstrating retaliation or a violation of his due process rights. TRO App. at pp. 8-11. But these circumstances do not evidence retaliation or a due process violation.

To the contrary, the USCIS referral of Petitioner to ICE in connection with the adjudication of his N-400 application was made pursuant to the standard procedure set forth in USCIS PM-602-0187, dated February 28, 2025. This memorandum states that CIS will issue NTAs for individuals like Petitioner who have pending N-400s that may be approvable but who are also deportable, and that CIS will refer cases involving criminal conduct, arrests, or convictions to ICE for enforcement action determinations. Here, ICE received a referral as normal under the procedure, and it elected to pursue enforcement. Petitioner does not offer any authorities indicating that his prior immigration proceedings or his N-400 application bar ICE from pursuing enforcement. To the contrary, he concedes that his prior immigration proceedings were dismissed without prejudice.

Moreover, Respondents submit that application of the *Mathews v. Eldrige* three-part test[3] supports their claim that no due process violation has occurred here. This is because: (1) Petitioner is admittedly a non-citizen who is subject to detention and removal; (2) Petitioner is already represented by counsel and has adequate procedures available to him to request release from detention in the form of seeking a prompt bond hearing before an IJ; and (3) the cost and burden to the government of requiring additional procedures to notify potential targets of planned immigration enforcement would be high, given the probability of enforcement targets absconding in response to such advance notice and procedures. Additionally, neither Petitioner's N-400 application nor his prior immigration proceedings entitle Petitioner to immigration benefits or

[3] *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (courts evaluating the sufficiency of process will consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest in minimizing the cost and burden of additional or substitute procedures.)

additional notice prior to immigration enforcement efforts.

This case is distinguishable from *Nak Kim Chhoeun*, which involved a class of Cambodian nationals who were subject to final removal orders but had been living in United States for many years before being detained without notice, in that Petitioner does not have a final removal order, and he was not on supervised release when he was arrested and detained. *Nak Kim Chhoeun* involved the revocation of the release of aliens who had final removal orders but who the government had been unable to deport pursuant to their final removal order; their custody status was then changed by taking them *back* into detention without notice. *See Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1241 (C.D. Cal. 2020). In other words, their removal period had been excessively prolonged because they could not be removed, which had been addressed by granting release. Such release can be revoked, but there are regulatory provisions for that revocation, and it may be done when circumstances have changed. By contrast, there are no similar limitations on initiating new removal proceedings against a non-citizen who (like Petitioner) did not have a removal order, was *not* on supervised release, and was *not* in removal proceedings. Furthermore, *Nak Kim Chhoeun* involved petitioners who lacked counsel able to pursue normal remedies from incorrect removals, which is not the case here. *See Nak Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1251 (C.D. Cal. 2020) (emphasizing the importance of giving petitioners "adequate time and opportunity to contact attorneys and access the system that has been constructed to prevent erroneous removals."). Petitioner has retained capable immigration counsel who can pursue any applicable relief in Immigration Court.

In essence, Petitioner argues here that the government's prior dismissal without prejudice of his prior removal proceedings should create a right to prevent the initiation of any future removal proceedings—and any attendant detention under them—without special additional restrictions and procedures. But there is not such a limitation in law or regulation. And the government's decision to commence removal proceedings is also generally barred from review and challenge by 8 U.S.C. § 1252(g), which divests

District Courts of jurisdiction to hear claims challenging one of "three discrete actions[:] . . . [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999) (emphasis in original); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g) precludes judicial review of execution of removal order). Thus, to the extent Petitioner's generic claims challenge these decisions, § 1252(g) renders this Court without jurisdiction to hear his habeas claims. *See Eliazar G.C. v. Wolford*, 2025 WL 1124688, at *3 (E.D. Cal. Apr. 16, 2025) (no habeas jurisdiction over habeas petition seeking to stay execution of removal order); *Aransiola v. Warden, FCI Victorville Medium*, 2025 WL 576592, at *6 (C.D. Cal. Jan. 22, 2025) (no habeas jurisdiction to challenge commencement of removal proceedings), *report and recommendation adopted by* 2025 WL 1085125 (C.D. Cal. Apr. 9, 2025).

Further, to the extent that Petitioner argues that he would have sought vacatur of his unlawful marijuana conviction under Cal. Penal Code §1473.7 had he known that ICE intended to pursue removal proceedings against him, (Dkt. 4 at p. 4,) it is worth noting that P.C. §1473.7 went into effect on January 1, 2017. Petitioner's first proceedings were dismissed *without* prejudice in 2022. Irrespective of whether ICE intended to pursue removal proceedings against Petitioner, he had several years to seek §1473.7 relief to avoid any possibility of removal proceedings being initiated against him again.

In short, adequate procedures exist and have been followed in this case. Petitioner can seek release on bond. This Court should not exempt Petitioner from the existing procedural mechanisms to seek release from detention.

### B. 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.

## V. CONCLUSION

For the above reasons, the Respondents respectfully request that Petitioner's *ex parte* TRO Application be denied.

Dated: September 25, 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 2,764 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 25, 2025

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