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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

OVANES GAZAYAN,

Petitioner,

v.

PAMELA BONDI, et al.

Respondents.

No. 5:25-cv-02599-SRM-DTB

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER [Dkt. no. 2]

[Declaration of Christopher Jenson filed concurrently herewith]

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I. INTRODUCTION

Petitioner's *Ex Parte* Motion for a Temporary Restraining Order (the "TRO Application") [Dkt. 2] requests essentially three things: Advance notice of any removal to a third-country, a bar on any district transfers, and immediate release under an order of supervision (OSUP). *See* Proposed Order [Dkt. 2-2]. A similar TRO motion was recently filed before the Hon. Judge Staton in *Omar Sanchez Ruiz v. Warden*, 5:25-cv-02486-JLS-AJR, who considered it and issued a ruling on September 23, 2025 [Dkt. 8] attached as Exhibit A hereto. Judge Staton thereby granted a TRO imposing an advance notice requirement for any removal to a third country,[1] but denied the requests for a bar on transfers to other districts and for immediate release, explaining their deficiencies. *Id.* While Respondents do not agree with the *Ruiz* ruling in all particulars, it followed the normal TRO process, and it addressed the issues by a reasoned ruling that essentially would also apply to the TRO Application [Dkt. 2] filed here by Petitioner.

The order that this Court issued *ex parte* in this case on October 1, 2025 at 5:21 p.m. [Dkt. 5] (the "Ex Parte Order"), by contrast, departs from important principles of notice, jurisdiction, injunction law, and procedural fairness. The Court issued that Ex Parte Order less than two hours after the Petitioner filed their TRO application at 2:55 p.m. [Dkt. 2], without Respondents having appeared in the case.

Issuing an *ex parte* order granting the requested TRO and more at the outset of the case, with neither notice nor service being provided to the enjoined party, nor a reasoned statement of jurisdiction and why the mandatory injunctive relief is ostensibly narrowly tailored, is not appropriate. Here, Petitioner's counsel gave advance notice of the filing of the *ex parte* application, and they then e-mailed a copy of the Ex Parte Order to the United States Attorneys' Office at 9:40 a.m. on the morning of October 1, 2025—thus ensuring the government's counsel was notified. By contrast, the Ex Parte Order made

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[1] Judge Staton had also recently issued a preliminary injunction requiring third-country notice procedures in *Nadar Nadari v. Pamela Bondi, et al.*, 2:25-cv-07893-JLS-BFM, Docket no. 12 [filed 09/10/25].

no provision for notice, although the enjoined party had not appeared in the case. When such an order requires immediate affirmative action by the government, it is concerning.

In aggravation, the Ex Parte Order went beyond what Petitioner (represented by experienced immigration counsel) had requested in his proposed TRO order [Dkt. 2-2]. This is not an Alien Enemies Act case. Instead, it involves a noncitizen detained at Adelanto who is subject to a removal order under the INA. Asserting that the Court's jurisdiction would be lost if such procedures and mandatory injunctive relief is not imposed on the government *ex parte* is not consistent with habeas jurisdiction principles. Issuing such sweeping *ex parte* orders, without adequate notice and procedure, without detailed reasoning and citation to authority, and without a narrow tailoring of injunctive relief, is likely to cause serious conflicts.

While the Court authorized the Respondents to file an opposition brief within 24 hours, and scheduled a hearing for October 6, 2025, it is difficult to see how that is meaningful process given that the Court already largely granted the TRO Application by the Ex Parte Order. An *ex post facto* hearing will not unwind the clock.

In any event, as explained in the concurrently filed declaration of Christopher Jenson, the government is taking steps to remove Petitioner to his home nation of Armenia—not to a third country. As with other countries that have historically refused to accept their nationals, circumstances have changed, and such removals are possible.

In sum, Respondents reiterate the arguments they presented in the *Omar Sanchez Ruiz* case. Conversely, the Respondents note the divergences between the Ex Parte Order and the *Omar Sanchez Ruiz* TRO order (Exh. A), and suggest that the Ex Parte Order erred in those respects, as well as in the extraordinary manner of its issuance.

Accordingly, the Ex Parte Order should be vacated and the TRO denied.

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).

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III. ARGUMENT

A. The Third Country Removal Notice Requirement is Inapplicable Because Petitioner is Not Being Removed to a Third Country, But Rather to His Home Nation of Armenia

Petitioner's TRO Application seeks an order requiring certain advance notice procedures prior to any third country removal of Petitioner. The government already provides advance notice of removal to third countries. Judge Staton nonetheless ordered that advance notice of third country removals be provided in her TRO order in that case, citing the lack of sufficient assurances. *Id.*

Respondents will not belabor that point here for two reasons. First, they already provide such notice of third country removals. Second, and more importantly, this is not a third country removal case. The government is taking steps to remove the instant Petitioner to his home nation of Armenia—not a third country. *See* Jenson Declaration. Plaintiff thus fails to carry his burden on the merits of showing that he actually faces an unlawful third country removal. He also fails to carry his burden of showing proximate irreparable harm from such.

There is a broader problem, however. In contrast to what Petitioner's own TRO Application and its Proposed Order had requested, the Court's Ex Parte Order [Dkt. 5] ordered a bar on *any* removal of Petitioner, including to his home nation of Armenia.

This is an INA case, not an Alien Enemies Act case. 8 U.S.C. § 1252(g) 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).

In departing from how other District Courts have ruled on the third country notice issue, and in going beyond what Petitioner had requested as his proposed TRO on this point, by ordering a *general bar on any removal of Petitioner to any country pursuant to his removal order*, the Ex Parte Order runs afoul of this jurisdictional limitation. Congress enacted it to prevent a serious problem: habeas petitions were being used to continuously obstruct imminent removals of a noncitizen pursuant to a final removal order. There indeed can be due process concerns if a *third country removal* needs sufficient advance notice of the country in question. But that is a very different issue than a threshold injunctive bar issued in a District Court against *any removal to any country, including a home country*.

Accordingly, to the extent any relief is ordered in this context, it should be limited to the approach taken by Judge Staton in *Omar Sanchez Ruiz*, an approach that other District Courts have adopted. Again, however, that is not needed or appropriate, because here Petitioner is being removed to his home nation of Armenia. *See* Jenson Declaration.

By contrast, the broader relief issued on this point by the Ex Parte Order should be vacated as it conflicts with the jurisdictional limitations that Congress has imposed on District Courts for cases involving the enforcement of final removal orders.

B. 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 like himself. Furthermore, he does not and cannot establish that he is likely to suffer irreparable harm caused by such a transfer. In *Omar Sanchez Ruiz*, Judge Staton explained why such bans on district transfer by preliminary injunctive relief are not appropriate (cf. the Ex Parte Order), denying a TRO on this point. *See* Exh. A hereto. Respondents reiterate those points below.

1. The law and facts do not clearly favor Petitioner

The government may detain aliens pending their removal pursuant to a removal order. 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 to another district.</u>

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.

As a threshold matter, if this Court had jurisdiction when the Petition was filed, then axiomatically any later transfer to another district within the United States would not end that jurisdiction. 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.").

Moreover, while the Ex Parte Order [Dkt. 5] issued here requires the Respondents to transfer Petitioner *back to this District* to ostensibly preserve the Court's jurisdiction, that is plainly illogical. If a transfer to another District somehow deprived this Court of jurisdiction (which it would not), then the Court could not "restore" its jurisdiction by ordering a return transfer.

Again, however, there is no such loss of jurisdiction at issue, as Judge Staton explained in *Omar Sanchez Ruiz*. There is no basis to enjoin transfer on this point.

In sum, Petitioner fails to establish any specific serious and irreparable harm that would arise from his potentially being detained in any other district versus being detained in the Central District of California.

Finally, the requested TRO is also not narrowly tailored on this issue. For example, detention in the Southern District of California, i.e. San Diego, would patently not be an "irreparable harm" relative to detention at Adelanto within the Central District of California. Nor would detention in the Northern District of California, the Eastern District of California, etcetera. Yet the order sought here (and stated in the Ex Parte Order) would bar any transfer outside the Central District. The effect is to essentially confer upon an immigration detainee a "veto right" against any non-preferred detention location, in contravention of law. That trivializes the high legal standard for issuing preliminary exigent relief, and particularly mandatory injunctive relief, which requires a much more stringent evidentiary demonstration and much more severe prejudice.

Accordingly, Petitioner's request for a TRO barring his transfer to other Districts should be denied, and the Ex Parte Order should be vacated on this point.

C. Petitioner's Request to be Ordered Released on an Order of Supervision Should Be Denied

Petitioner also asks that the Court order that he be released from immigration detention under an order of supervision (OSUP), on the ostensible grounds that the Respondents revoked Petitioner's OSUP without any showing that his removal is reasonably foreseeable. But Petitioner submits no evidence of that putative violation.

Petitioner briefly suggests he has been subjected to unreasonably prolonged detention under a final removal order pursuant to the Supreme Court's ruling in *Zadvydas v. Davis*, 533 U.S. 678 (2001). But Petitioner does not establish that he has been detained more than 180 days after the issuance of a final removal order. Indeed, it is not apparent from the TRO Application that Petitioner has *ever* spent *any* time in detention pursuant to his final removal order before his very recent arrest and detention. *See* TRO Application, pp. 4-7.

And in any event, the detention period that the Supreme Court addressed in *Zadvydas* was not just the bare passage of time after a removal order; it was an actual detention period, meaning an actual deprivation of liberty by physical confinement, which the government must justify after that total detention period exceeds six months. As the Supreme Court explained:

> 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. Thus the noncitizen "may be held in confinement until it has been determined that there is ***no significant likelihood of removal in the reasonably foreseeable future.***" *Id.* (bold italic emphasis added).

In finding that the government must justify extensively prolonged detentions, the Supreme Court did not base that on the bare passage of time after a removal order is issued *and while the non-citizen is not detained*. The issue was a prolonged period of confinement, not just a bare elapse of time.

Courts therefore properly deny *Zadvydas* claims under such circumstances, and even deny them when the detention period after the removal order was issued is relatively prolonged. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than 14 months postfinal order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). *See also Omar Sanchez Ruiz*, Exhibit A (denying TRO on this point).

Furthermore, the government's discretion to revoke an OSUP is broad. *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). There is not an elaborate and high precondition imposed on revocation. "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original).

Petitioner vaguely suggests that revocation procedure was not followed properly here. *See* TRO Application, p. 3. But he submits no evidence proving that. He was only very recently arrested and detained. The Hon. Judge Blumenfeld recently denied a preliminary injunction motion in a somewhat similar case alleging a lack of sufficient redetention process, noting that the evidentiary burden and had not been met, and also that it was unclear that release would be the appropriate remedy for any violations of revocation procedure. *See Long Ton v. Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [Dkt. no. 17] (September 3, 2025) (Order Denying Application for Preliminary Injunction). The burden is on the moving party to show that ordering release via a TRO would be narrowly tailored to rectifying a deficiency that was proven under the heavy standard for preliminary injunctive relief. Speculating that the revocation of release process was not fully satisfactory in all possible respects does not carry that burden.

Finally, even if there were some violation of a particular regulatory procedure here (which the TRO Application does not establish), the appropriate remedy would be to rectify that specific procedural issue and its applicable substantive harm, if any—it would not be to immediately leap to the radical remedy of ordering an immediate release from detention by a TRO.[2]

IV. CONCLUSION

The Respondents do not oppose giving Petitioner advance notice of his removal to third-countries, and would provide such notice anyways regardless of a TRO. But Petitioner is not being removed to a third country. Instead, the government is taking steps to remove him to Armenia. Beyond that point, the Respondents oppose a bar on any potential district transfer, and they also oppose Petitioner being ordered released under an order of supervision. The TRO Application does not carry Petitioner's heavy burden to establish entitlement to such extraordinary relief. Accordingly, the Ex Parte Order should be vacated and the TRO Application denied.

Dated: October 2, 2025

Respectfully submitted,

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[2] *See Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019); *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). As the *Smith* court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order.... Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

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 4,049 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 2, 2025

/s/ Daniel A. Beck
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