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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

J.Y.L.C.,

Petitioner,

v.

DREW BOSTOCK,¹ et al.,

Respondents.

Case No. 3:25-cv-02083-AB

**RESPONSE TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND TO
PETITION FOR WRIT OF HABEAS
CORPUS**

¹ For “core” habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, “not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The United States Attorney General, the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”), the Secretary of the Department of Homeland Security (“DHS”), and the U.S. Department of Justice are not proper respondents to this core habeas petition because none of those officials has any immediate responsibility for Petitioner’s detention. *See id.* at 440 n.13 (“[T]he proper respondent is the person responsible for maintaining—not authorizing—the custody of the prisoner.”). Additionally, the current ERO Seattle Acting Field Office Director is Laura Hermosillo.

Respondents hereby respond to Petitioner's motion for temporary restraining order ("TRO"), ECF No. 1, and petition for writ of habeas corpus ("petition"), ECF No. 2. This response is supported by the Declaration of Deportation Officer David Bagirov ("Bagirov Decl."). For the following reasons, the Court should deny Petitioner's TRO motion and habeas petition.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala who was apprehended by U.S. Customs and Border Patrol ("CBP") shortly after entering the United States without inspection in December 2017 at or around Hidalgo, Texas. *See* Bagirov Decl. ¶ 3. At that time, Petitioner was processed for removal proceedings and issued a Notice to Appear ("NTA") charging him with inadmissibility pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"). *Id.* Because Petitioner was an unaccompanied minor, he was transferred to the custody of the Office of Refugee Resettlement ("ORR"). *Id.*

On or about January 13, 2018, Petitioner was released from ORR custody into the custody of his mother's partner. *Id.* ¶ 5. On or about April 3, 2018, Petitioner's NTA was filed with the Detroit Immigration Court. *Id.* ¶ 6. In July 2018, Petitioner's removal proceedings changed venue to the Portland Immigration Court and were subsequently consolidated with those of his mother, with whom he was residing at the time. *Id.* ¶ 7.

Petitioner turned 18 in early 2019 and was placed on a new Order of Release on Recognizance ("OREC"), documented in a Form I-220A. *Id.* ¶ 8. The OREC

contained a number of conditions, including reporting conditions and a condition requiring Petitioner to obtain written permission in advance from ERO prior to any change in address. *Id.* The OREC also instructed that Petitioner may not violate any local, state or federal laws or ordinances. *Id.* The Form I-220A notified Petitioner that failure to comply with the conditions of release may result in revocation of the OREC and his arrest and detention by ICE. *Id.*

On September 25, 2019, Petitioner filed an application for asylum and related relief (Form I-589) with the Immigration Court. *Id.* ¶ 9. Due to immigration court closures and public-health related distancing limitations during the COVID-19 pandemic, removal proceedings were continued and then *sua sponte* off-docketed without input from either party. *Id.* ¶ 10. The Immigration Court has since re-docketed Petitioner's case for a master calendar hearing on December 16, 2025. *Id.* Petitioner is represented in those removal proceedings. *Id.* Petitioner is required to immediately notify the immigration court of any change of address. *Id.* ¶ 11.

On or about February 10, 2022, Petitioner filed a Change of Address Form (Form EOIR-33) notifying the Immigration Court that he had moved to 2940 SW 209th Ave., Aloha, Oregon 97006. *Id.* ¶ 12. This is Petitioner's current address on file with the Immigration Court. *Id.*

On November 8, 2025, ERO officers were conducting immigration enforcement operations in the Beaverton, Oregon area. *Id.* ¶ 13. Officers were randomly running the license plates of vehicles traveling around them and the names and dates of birth of the registered owners of those vehicles through DHS

systems to determine if the registered owner was in the United States unlawfully and potentially subject to enforcement action. *Id.* Vehicles were chosen at random and were not targeted based on any characteristics of the driver or the vehicle. *Id.*

At approximately 8:25 a.m., on November 8, ERO spotted [REDACTED] driving westbound on SW Tualatin Highway with license plate [REDACTED]. *Id.* ¶ 14. A search revealed that the vehicle was registered to J.Y.L.C. and that the address on the vehicle registration was [REDACTED].

[REDACTED] *Id.*

DHS database searches using J.Y.L.C.'s name and date of birth revealed that J.L.Y.C. is in the United States unlawfully; that he had upcoming removal proceedings; and that the last known address he had reported to ERO and to the Executive Office for Immigration Review ("EOIR") did not match the address on the vehicle registration. *Id.* ¶ 15.

Though not required for an OREC revocation, an I-200 administrative arrest warrant was hand generated in the field before the vehicle stop because it was determined that, if the Petitioner was the driver and registered owner of the vehicle, his failure to update his address in compliance with his OREC requirements and his unlawful status rendered him a flight risk. *Id.* ¶ 16.

Officers then conducted a vehicle stop. *Id.* ¶ 17. After approaching the vehicle, Officer Bagirov identified Petitioner based on photographs contained in DHS databases. *Id.* Petitioner provided his name and date of birth and presented an Oregon identity card that confirmed his name and date of birth. *Id.*

Petitioner admitted during the stop that he currently resides at 

 that he had been living at that address since approximately November 2023; and that he had not notified ERO of his change in address. *Id.* ¶ 18. ERO also discovered during the stop that Petitioner was driving without a license, which ERO determined made Petitioner a danger in addition to a flight risk. *Id.* ¶ 19.

Petitioner was notified that ERO had a warrant for his arrest; that his OREC was being revoked; and that he was being taken into ICE custody. *Id.* ¶ 20. Petitioner was then transported to the ERO Office in Portland, Oregon for processing, *id.*, and then to the Northwest ICE Processing Center (“NWIPC”) in Tacoma, Washington. *Id.* ¶ 21.²

Petitioner is currently detained pursuant to INA § 235(b)(2). *Id.* ¶ 23. He may request a custody redetermination hearing with the Immigration Court and may present legal arguments contesting that determination to the Immigration Judge along with any evidence in support of a request for release. *Id.*

LEGAL AND REGULATORY BACKGROUND

I. The Constitution and federal statutes confer broad powers on the Executive Branch to administer the immigration system.

“Control over immigration is a sovereign prerogative.” *El Rescate Legal*

² ERO intends to file a notice with the Immigration Court that Petitioner is in ICE custody in Tacoma, which will automatically result in a change of venue in Petitioner’s removal proceedings to the Tacoma Immigration Court. *Id.* ¶ 22.

Servs., Inc. v. Exec. Off. of Immigr. Rev., 959 F.2d 742, 750 (9th Cir. 1991). The primary immigration statute, the Immigration and Nationality Act (“INA”), provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. Among those powers, the President, through the Department of State and the Department of Homeland Security (“DHS”), decides which noncitizens may enter and remain in the country. *See* 8 U.S.C. §§ 1103, 1104. Under the INA, if an applicant for admission seeks admission to the United States without a valid entry document, DHS may charge the noncitizen as inadmissible and initiate removal proceedings against the noncitizen. 8 U.S.C. § 1229a(a)(2). Removal proceedings begin when an immigration officer files the notice to appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court).

II. Noncitizens are subject to detention during removal proceedings.

Under 8 U.S.C. § 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens “be detained for a proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“[F]or aliens arriving

in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). DHS though has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

Under 8 U.S.C. § 1226(a), DHS may, in its discretion, detain a noncitizen during removal proceedings, release them on bond, or release them on conditional parole. By regulation, immigration officers can release a noncitizen if they demonstrate that they “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).

DHS “at any time may revoke a bond or parole authorized under subsection (a), rearrest the noncitizen under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b); see also 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9) (“When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director [and certain other federal officers] in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.”).

When DHS takes a noncitizen back into custody, the person can request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge 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 immigration judge, as an initial matter, determines whether the noncitizen is detained pursuant to 8 U.S.C. § 1226(a) and therefore eligible for custody redetermination. If the immigration judge makes such a finding, the immigration judge may continue detention or release the noncitizen on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Once a noncitizen is released on bond, ICE can rearrest the person at any time on the original warrant and revoke the bond. *See* INA 236(b); *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981).

ARGUMENT

I. The Court should deny Petitioner's TRO motion.

A. Legal Standard

The standards for a TRO and a preliminary injunction are “substantially identical.” *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an “extraordinary and drastic remedy.” *Munaf v. Geren*, 553 U.S. 674, 689 (2008). “To obtain a preliminary injunction, a plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest.” *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (en banc) (citing *Winter v.*

Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008)). To carry the burden of persuasion, the moving party must make a “clear showing” on each of these four required elements. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

Because Petitioner here seeks a mandatory injunction, his burden is “doubly demanding.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). To succeed, he “must establish that the law and facts *clearly favor*” his position, “not simply that [h]e is likely to succeed.” *Id.* (emphasis in original). Further, a mandatory injunction “is particularly disfavored” and may not be granted “unless extreme or very serious damage will result.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (cleaned up).

B. The Court should deny Petitioner’s motion because it improperly seeks final relief.

As a threshold matter, this Court should deny a TRO because the requested order—immediate release from custody—goes well beyond maintaining the status quo pending a determination on the merits. The requested TRO improperly seeks the ultimate relief Petitioner demands in his habeas petition.

The appropriate purpose of emergency equity “is to preserve the status quo and the rights of the parties until a final judgment issues in the cause.” *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction or TRO may not be used to obtain “a preliminary adjudication on the

merits,” but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Petitioner’s habeas petition seeks to halt his detention. See ECF No. 1, Prayer for Relief (d). Petitioner seeks the same relief in his TRO motion. See ECF No. 2. In seeking ultimate habeas relief in a TRO motion, Petitioner would circumvent the habeas proceeding. The Ninth Circuit has firmly rejected this approach, concluding that “judgment on the merits in the guise of preliminary relief is a highly inappropriate result.” *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); see also *Doe v. Bostock*, No. 24-326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024). Accordingly, Petitioner’s TRO motion should be denied.

C. Petitioner makes no showing of irreparable harm.

This Court also should deny Petitioner’s motion because he fails to establish a likelihood of irreparable harm. To obtain a TRO, a party “must establish” that he is “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. To do so, the party must make a “showing on the facts” of the case and cannot rely on unsubstantiated argument and presumption. *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 998 (9th Cir. 2011); see also *Ovitsky v. Oregon*, No. 3:12-cv-02250-AA, 2013 WL 5253162, at *3 (D. Or. Sept. 16, 2013) (denying relief where plaintiff did not provide evidence of irreparable harm).

Petitioner makes no showing of a likelihood of irreparable harm. Petitioner’s motion fails to include a supporting legal memorandum demonstrating that the

elements for a TRO have been satisfied.³ See ECF No. 2 at 1–2. In an accompanying declaration, Petitioner’s counsel makes the conclusory assertion that “[g]iven Petitioner’s pending asylum case, lack of criminal history, and family ties in the community,” his continued detention would cause irreparable harm. ECF No. 2-1 at 2. This assertion fails to establish that Petitioner faces any harm other than the fact of his continued detention, which is a harm that all habeas petitioners face.

Counsel also speculates that Respondents intend to move Petitioner from the Tacoma facility to Louisiana or remove him from the United States “to a country of which the petitioner is neither a citizen nor a national.” ECF No. 2-1 at 3. However, showing a “possibility” of irreparable harm is insufficient for such relief. See *Winter*, 555 U.S. at 22.

Petitioner may believe that he will be irreparably harmed by his detention, but this does not satisfy the inquiry for mandatory injunctive relief. It only “begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury.” *Cortez v. Nielsen*, No. 19-754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Petitioner’s “loss of liberty” is “common to all [noncitizens] seeking review of their custody or bond determinations.” *Resendiz v. Holder*, No. 12-4850-WHA, 2012 WL 5451162, at *5

³ See Local Rule 7-1(c) (“Every motion must be supported by a legal memorandum.”); see also Fed. R. Civ. P. 7(b)(1)(B) (requests for a court order must be made by motion that, among other things, “state[s] with particularity the grounds for seeking the order”).

(N.D. Cal. Nov. 7, 2012). “[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm[.]” *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

In his removal proceedings, Petitioner will have full due process including the right to assert claims for immigration relief. Petitioner will have the right to appeal an unfavorable immigration-judge decision to the Board of Immigration Appeals (“BIA”), and there are regulatory stay provisions that prevent execution of an immigration-judge decision in the context of a BIA appeal. 8 C.F.R. § 1003.6(a). He also has the opportunity to file a request for a custody redetermination hearing with the Immigration Court, at which he may present any legal arguments contesting DHS’s determination that he is subject to mandatory custody pursuant to INA § 235(b) to the Immigration Judge along with any evidence in support of a request for release.

For these reasons, this Court should deny the TRO motion.

D. Petitioner establishes no likelihood of success on the merits.

This Court should deny Petitioner’s motion, in addition, because he fails to establish a likelihood of success on the merits of his habeas petition. Indeed, he makes no argument that he is likely to succeed on the merits of his habeas petition. *See* ECF No. 2.

Petitioner cannot establish likelihood of success on the merits, because his habeas claim is unsupported. First, ICE acted within its lawful authority under

8 C.F.R. § 236.1(c)(9), which provides that, “when an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion” of certain senior immigration officers. Here, ERO made the determination to revoke Petitioner’s release after it was discovered that he had failed to update his address with ERO and EOIR, and that he was driving without a license. While an officer’s discretion to revoke release has been limited to situations in which there has been a “change in circumstances” since the non-citizen was initially released, *Matter of Sugay*, 17 I. & N. 637, 640 (B.I.A. 1981), the record here indicates that the revocation was based on consideration of facts since Petitioner’s release showing that petitioner had violated the OREC, and reasonably determined that he may be a flight risk and a danger. Thus, immigration authorities acted within their lawful authority when revoking Petitioner’s release.

For these reasons, this Court should deny the TRO motion.

E. The balance of equities and the public interest disfavor a TRO.

This Court should also deny Petitioner’s motion because the balance of equities and the public interest disfavor a TRO. The balance of equities and the public interest factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts “should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). The public interest in enforcement of the United States’ 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*, 556 U.S. at 435 (“There is always a public interest in prompt execution of removal orders”).

This public interest outweighs Petitioner’s private interest. Petitioner appears to argue that he meets his burden for a TRO because “[p]rior to this arrest, Petitioner had been fully compliant with all immigration requirements and had a pending asylum application with a merits hearing scheduled for December 2025.” ECF No. 2-1 at 2. But Petitioner has not complied with the terms of the OREC and was found to have been driving without a license. In addition, Petitioner entered the United States illegally and is subject to removal proceedings and detention under federal law.

Further, the immigration laws and regulations provide Petitioner avenues for relief through the administrative process. Petitioner has sought asylum and is entitled to certain administrative procedures as a result. Petitioner also may file a request for a custody redetermination hearing with the Immigration Court, at which he may present any legal arguments contesting that determination to the Immigration Judge along with any evidence in support of a request for release. He may continue to pursue all applications for relief from removal that he is currently pursuing in removal proceedings while detained.

For these reasons, the Court should deny the TRO motion.

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II. The Court should deny the habeas petition.

To obtain habeas relief, Petitioner must prove that his custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. Petitioner alleges that Respondents violated his due process rights under the Fifth Amendment to the United States Constitution when they “arrested and detained Petitioner on November 8, 2025, without providing a lawful basis for detention or an individualized determination of flight risk or danger to the community.” ECF No. 1 at p. 5. However, Plaintiff has not made a clear showing that Petitioner’s due process rights were violated such that habeas relief is warranted. First, Petitioner is being lawfully detained; he is subject to removal proceedings under federal law, which also provides for mandatory detention pending the removal proceedings. Second, the flight risk/danger analysis is not a prerequisite to ICE detention. Petitioner was found to have violated the terms of the OREC by failing to update his address with ERO or EOIR and was found to have been operating a vehicle without a license. If Petitioner believes this was an error, he may request a custody redetermination hearing with the Immigration Court. Third, even assuming *arguendo* that DHS must evaluate flight risk/danger before re-detention, ERO made a reasonable determination, in light of the facts collected during an appropriate investigation, that Petitioner presented a flight risk and a danger to the community.⁴

⁴ Petitioner’s argument that DHS must consider his individualized circumstances ignores that the statute and regulation authorizing DHS to re-detain noncitizens is

Petitioner also seeks habeas relief from removal to a third country without due process. But this anticipatory claim is not ripe for consideration. Third country removals are provided for in 8 U.S.C. § 1231(b), which governs noncitizens with orders of removal. Petitioner's removal proceedings are ongoing, and no removal has been issued. Petitioner alleges no facts that could support a conclusion that ICE has considered removing the Petitioner to a third country, or that ICE has ever indicated to Petitioner that third country removal is a possibility in his case. Thus, Petitioner has failed to allege sufficient facts, or any facts, to support his third-country removal claim. In other words, Petitioner's arguments concerning third country removal in this case are wholly unsupported.

Even if ripe, Plaintiff's third-country removal claim fails because habeas corpus review in federal district court is not available for claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders," 8 U.S.C. § 1252(g), "arising from any action taken or proceeding brought to remove an alien," 8 U.S.C. § 1252(b)(9), or "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding [an alien's] detention or release," *Demore v. Kim*, 538 U.S. 510, 516 (2003) (discussing 8 U.S.C. § 1226(e)); *see also* 8 U.S.C. §

broad and contains no such requirement. *See, e.g., Salvador F.-G. v. Noem*, No. 25-cv-0243, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025) (finding nothing in the statute or regulation authorizing the revocation of bond or parole to require a change in a noncitizen's circumstances before being re-detained).

1252(a)(2)(B)(ii) (precluding review of other discretionary decisions and actions specified by statute).

Accordingly, the Court should deny the habeas petition.

CONCLUSION

For these reasons, the Court should deny Petitioner's TRO motion and deny his petition for habeas relief.⁵

Respectfully submitted this 9th day of November, 2025.

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/s/ Sarah E. Feldman
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⁵ Respondents were given 24 hours—from Saturday, November 8 to Sunday, November 9, 2025—to respond to Petitioner's petition for habeas relief and TRO motion. Twenty-four hours is insufficient time for Respondents and their counsel to fully investigate Petitioner's claims and evaluate potential defenses. Additionally, ordering a response over a weekend means Respondents may not have the usual access to necessary files and documents that could aid their investigation and the Court's analysis. Accordingly, there may be additional arguments and information not known at this time, which Respondents will submit in supplemental briefing if necessary.