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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 LEANDRO XAVIER OLIVEIRA,

12 Petitioner,

13 v.

14 SERGIO ALBARRAN, ET AL.,

15 Respondents.
16

CASE NO. 1:25-CV-01760-WBS-AC

RESPONDENTS'S OPPOSITION TO
MOTION FOR TEMPORARY RESTRAINING
ORDER

DATE: December 8, 2025

TIME: 2:00 p.m.

COURT: Hon. William B. Shubb

17 **OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

18 On December 5, 2025, Petitioner Leandro Xavier Oliveira ("the petitioner") filed an
19 *ex parte* motion for temporary restraining order and preliminary injunction. ECF 2
20 ("Mot."). The Court should deny the motion for a TRO because at this stage there is no
21 basis to prohibit ICE from moving the petitioner outside the Eastern District or removing
22 the petitioner to a third country. Accordingly, the petitioner has failed to meet his
23 burden to support a temporary restraining order. ¹

24 **LEGAL STANDARD**

25 The standard for issuing of a temporary restraining order is "substantially
26 identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co.*

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28 ¹ The Respondents waive oral argument in this matter and have no opposition to
the Court's consideration of this matter as a preliminary injunction.

1 *v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions
 2 are extraordinary remedies “never awarded as of right.” *Winter v. Nat. Res. Def. Council,*
 3 *Inc.*, 555 U.S. 7, 24 (2008). “[P]laintiffs seeking a preliminary injunction face a difficult
 4 task in proving that they are entitled to this extraordinary remedy.” *Earth Island Inst.*
 5 *v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Petitioner’s
 6 burden is aptly described as “heavy.” *Id.* A preliminary injunction requires “substantial
 7 proof” and a “clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

8 “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to
 9 succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of
 10 preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in
 11 the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

12 Alternatively, a plaintiff can show “serious questions going to the merits and the balance
 13 of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are
 14 satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)

15 ARGUMENT

16 **A. The petitioner is lawfully detained pending adjudication of his asylum** 17 **application and removal proceedings; there is no basis for habeas relief.**

18 The facts in this case are undisputed. Petitioner Leandro Xavier Oliveira is an
 19 alien who is present in the United States and has not been admitted to the United
 20 States. Accordingly, the petitioner is an applicant for admission. Any alien who “is
 21 present” in the United States but “has not been admitted” to the United States is “an
 22 applicant for admission.” 8 U.S.C. § 1225(a)(1); *see also Jennings v. Rodriguez*, 583 U.S.
 23 281, 287 (2018) (“an alien who ‘arrives in the United States,’ or ‘is present’ in this country
 24 but ‘has not been admitted,’ is treated as ‘an applicant for admission.’ § 1225(a)(1).”).

25 As an applicant for admission, the petitioner can request an interview with an
 26 asylum officer if he intends to apply for asylum or has a fear of persecution. 8 U.S.C.
 27 § 1225(b)(1)(A)(ii). If, after such a hearing, the asylum officer finds that the applicant for
 28

admission has a credible fear, then the applicant for admission “shall be detained” pending further consideration. 8 U.S.C. § 1225(b)(1)(B)(ii).

Here, the petitioner requested and received an asylum interview. At that hearing, the asylum officer found that the petitioner had a credible fear. Accordingly, the petitioner was detained pending further proceedings. Later, at the discretion of Immigration and Customs Enforcement (“ICE”), the petitioner was granted temporary parole. ECF 1-6, Exh. D. ICE specifically advised the petitioner that “[p]arole is entirely within the discretion of ICE and can be terminated at any time and for any reason.” ECF 1-7, Exh. E. Subsequently, ICE terminated the discretionary grant of parole and detained the petitioner. Because the petitioner is lawfully detained, there is no basis for habeas relief.

B. A TRO is not appropriate to address a hypothetical, future action; especially where the statute specifically authorizes third country removals.

The petitioner seeks an order from the Court restraining ICE from removing the petitioner to the third country. There is no legal basis to prohibit ICE from removing petitioner to a third country as part of expedited removal proceedings. Indeed, 8 U.S.C. § 1158 specifically authorizes removal of an asylum seeker to a “safe third country.” 8 U.S.C. § 1158(a)(2).

The cases cited by the petitioner do not support the requested relief at the TRO stage. The petitioner cites *Andriasian v. I.N.S.*, 180 F.3d 1033 (9th Cir. 1999) regarding the constitutional and procedural protections afforded individuals applying for asylum, but this is not a case involving a TRO. This case involves a final determination denying asylum and did not involve expedited removal proceedings. The petitioner cites *D.V.D. v. D.H.S.*, 778 F. Supp. 3d 355 (D. Mass. April 18, 2025) for the proposition that this Court should find the third country removal is unlawful. Pet. at 10. This case is not a § 2241 case but rather a civil action for declaratory judgment and the injunctive relief granted in this case was later stayed by the Supreme Court. *Department of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (June 23, 2025). The petitioner cites *J.R. v. Bostock*, --- F. Supp.

3d ---, 2025 WL 1810210 (W.D. Wash. June 30, 2025), a case where the district court granted a TRO prohibiting ICE from removing the petitioner to a third country without prior approval from the court. This case involved a final order of removal and did not involve expedited removal. The petitioner cites *Misirbekow v. Venegas*, 793 F. Supp. 3d 892 (S.D. Tex. August 1, 2025), a case where the district court granted a TRO prohibiting ICE from moving the petitioner outside the district without prior approval from the court. This case involved withholding of removal and not expedited removal.

C. The petition is currently pending and therefore jurisdiction remains with the Court until the petition is adjudicated; there is no basis to grant a TRO to prohibit the movement of the petitioner.

A § 2241 petition must be filed in the judicial district where the petitioner is detained. *Rumsfeld v. Padilla*, 542 U.S. 426, 442–443 (2004) (“The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”). Once the petition is filed, jurisdiction remains in the original filing jurisdiction even if the petitioner is subsequently transferred to a different judicial district. *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990) (“jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner”) (citation omitted); *Johnson v. Gill*, 883 F.3d 756, 761 (9th Cir. 2018) (“Although Johnson is currently incarcerated at the Federal Correctional Institution in Oakdale, Louisiana, habeas jurisdiction was proper in the [Eastern District of California] because Johnson filed his petition while incarcerated at the Federal Correctional Institution in Mendota, California”). Thus, this Court has jurisdiction to adjudicate the petition regardless of whether the petitioner is transferred outside of the Eastern District of California. And therefore, there is no basis to grant a temporary restraining order restricting the movement of the petitioner.

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CONCLUSION

For the above-stated reasons, the Court should deny the motion for a temporary restraining order.

Dated: December 8, 2025

ERIC GRANT
United States Attorney

By: /s/ JUSTIN L. LEE
JUSTIN L. LEE
Assistant United States Attorney