

District Judge Tana Lin

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICTOR ARGENIS REA-HERNANDEZ,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02609-TL

**RESPONDENTS' OPPOSITION TO
PETITIONER'S EMERGENCY
MOTION PREVENTING
TRANSFER DURING PENDENCY
OF PETITION**

Noted for Consideration:
January 29, 2026.

I. INTRODUCTION

This Court should deny Petitioner Victor Argenis Rea-Hernandez's Emergency Motion Preventing Transfer, Dkt. 16 ("TRO"). The U.S. Department of Homeland Security ("DHS") detained Petitioner in January 2025 following his criminal arrest. Petitioner has been subject to a final order of removal since May 12, 2025. Although an immigration judge granted Petitioner protection under the Convention Against Torture ("CAT") with respect to removal to his home country of Venezuela, U.S. Immigration and Customs Enforcement ("ICE") is actively effectuating his removal to Mexico and has provided Petitioner with notice of that removal.

1 Because Petitioner expressed a fear of removal to Mexico, U.S. Citizenship and
2 Immigration Services (“USCIS”) conducted a credible fear interview and issued a negative fear
3 finding, which was served on Petitioner. Mexico has agreed to accept Petitioner, and his removal
4 is imminent.

5 Petitioner’s habeas petition primarily alleges that his detention is unlawful under
6 *Zadvydas* because removal to a third country was not reasonably foreseeable. That assertion is no
7 longer accurate. ICE has now secured Mexico as a receiving country, yet Petitioner has filed the
8 instant emergency motion seeking to continue litigating his habeas petition. Because Petitioner’s
9 removal would moot the habeas petition, the requested relief is unwarranted.

10 “For a habeas petition to continue to present a live controversy after the petitioner’s release
11 or deportation . . . there must be some remaining ‘collateral consequence’ that may be redressed
12 by success on the petition.” *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). Here, Rea-
13 Hernandez’s habeas petition challenges only his detention and seeks an order preventing removal
14 to a third country. It does not allege any collateral consequence that this Court could redress
15 following his removal.

16 To the extent Petitioner asserts a fear of removal to Mexico, that claim falls within the
17 exclusive jurisdiction of the immigration courts and is not properly raised in a habeas petition. In
18 any event, Petitioner has already received due process in the form of a USCIS credible fear
19 interview, which resulted in a negative fear determination.

20 Finally, Petitioner’s habeas petition seeks release from custody and does not allege that
21 release would pose health concerns. That position is difficult to reconcile with Petitioner’s
22 simultaneous claim that removal—or release—to Mexico would create new or acute medical
23 risks. Any claim that removal to a particular country presents health or safety concerns must be
24 raised before the immigration court, not through habeas relief. Even if the Court entertained these

1 claims, Petitioner provides no medical support in his emergency motion for these assertions.
 2 Physicians at the Northwest ICE Processing Center (“NWIPC”) have evaluated Petitioner and
 3 determined he is not on a medical hold and can travel.

4 This opposition is supported by the declarations of NWPIC Clinic Director, Eddie Wang,
 5 M.D. (“Dr. Wang Decl.”), and the Declaration of Deportation Officer Mihaela Hammer
 6 (“Hammer Decl.”).

7 **II. LEGAL STANDARD**

8 A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that
 9 the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
 10 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)
 11 (the TRO standard is “substantially identical” to preliminary injunction standard). A petitioner
 12 must establish: (1) “that he is likely to succeed on the merits”; (2) “that he is likely to suffer
 13 irreparable harm in the absence of preliminary relief”; (3) “that the balance of equities tips in his
 14 favor”; and (4) “that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

15 Alternatively, a petitioner who shows only that there are “serious questions going to the merits”
 16 may satisfy the *Winter* requirements by establishing that the “balance of hardships [] tips
 17 sharply towards [the petitioner],” and that the remaining two *Winter* factors are met. *All. for the*
 18 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

19 Preliminary relief is meant to preserve the status quo pending final judgment, rather than
 20 obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,
 21 739 F.2d 1415, 1422 (9th Cir. 1984). When preliminary relief would change the status quo and
 22 “order a responsible party to take action,” it is “particularly disfavored.” *Marlyn Nutraceuticals,*
 23 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009). Indeed, “[i]n general,
 24 mandatory injunctions are not granted unless extreme or very serious damage will result and are

not issued in doubtful cases.” *Id.* (internal quotation omitted). The moving party “must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Where a plaintiff seeks mandatory injunctive relief, “courts should be extremely cautious.” *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted).

III. BACKGROUND

Federal Respondents reiterate and fully incorporate by reference the background section contained in their Return Memorandum (Dkt. 6), as well as the accompanying declarations and exhibits (Dkts. 7–8).

IV. ARGUMENT

The TRO should be denied in its entirety because Petitioner has not established that the law and facts clearly favor injunctive relief.

1. **Petitioner is unlikely to succeed on the merits of his claims.**

Petitioner cannot demonstrate a likelihood of success on the merits. His central assertion—that ICE lacks travel documents or proof that Mexico has agreed to accept him—is both factually incorrect and legally immaterial. TRO, pgs. 1–2. ICE has secured Mexico as a receiving country and is prepared to effectuate Petitioner’s removal promptly once the Court’s temporary order is lifted. Hammer Decl. ¶ 13. Upon dissolution of this extraordinary interim relief, ICE will expeditiously proceed with removal, rendering Petitioner’s detention-related claims moot. *Id.* ¶¶ 12–13.

As explained more fully in Federal Respondents’ Return Memorandum (Dkt. 6), Petitioner’s continued detention is lawful, and he is not entitled to release under *Zadvydas v.*

1 *Davis*, 533 U.S. 678 (2001). Because removal is now reasonably foreseeable and imminent,
2 Petitioner cannot establish a likelihood of success on the merits.

3 Petitioner's habeas petition rests primarily on the premise that his detention violates
4 *Zadvydas* because removal to a third country was not reasonably foreseeable. Dkt. 1. That premise
5 no longer holds. ICE has secured a receiving country—Mexico—and removal is now reasonably
6 foreseeable and imminent. Hammer Decl. ¶ 13. Despite this development, Petitioner seeks
7 emergency relief to prolong detention solely to continue litigating a habeas petition challenging
8 that detention. Because removal would moot the petition, the extraordinary relief requested is
9 unwarranted.

10 A habeas petition must present a live case or controversy. Once a petitioner is removed,
11 the petition becomes moot unless there are continuing collateral consequences that may be
12 redressed by the Court. *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). Here, Petitioner
13 challenges only his detention and seeks to prevent removal to a third country. He identifies no
14 collateral consequence that would survive removal or that this Court could remedy post-removal.
15 Accordingly, once removal occurs, his claims no longer satisfy Article III's case-or-controversy
16 requirement.

17 To the extent Petitioner suggests that removal—particularly removal to Mexico—would
18 pose medical risks, those claims are not properly before this Court. Congress has expressly
19 stripped district courts of jurisdiction over claims arising from the execution of removal orders,
20 including challenges to the country of removal. 8 U.S.C. § 1252(g). The law is clear: under 8
21 U.S.C. § 1252(g), “no court shall have jurisdiction to hear any cause or claim by or on behalf of
22 any alien arising from the decision or action by the Attorney General to commence proceedings,
23 adjudicate cases, or execute removal orders against any alien.” This Court therefore lacks subject-

1 matter jurisdiction to adjudicate or enjoin removal based on alleged health conditions in the
2 receiving country. Any such determination lies exclusively within the immigration court system.

3 Moreover, Petitioner's position is internally inconsistent. Petitioner's habeas petition
4 seeks release from custody and does not allege that continued detention itself poses an
5 unconstitutional medical risk. Dkt. 1. He asserts that continued detention in a carceral setting
6 harms his health, while simultaneously opposing removal—which would end that detention. *Id.*
7 To the extent Petitioner seeks to argue that Mexico is an inappropriate country of removal due to
8 alleged inadequacies in medical care, that claim must be raised in immigration proceedings, not
9 through habeas.

10 Even if the Court entertained Petitioner's claims, those claims are unsupported and
11 without merit. Medical staff at the Northwest ICE Processing Center have examined Petitioner
12 and determined that he is not on a medical hold and is medically cleared for travel. Dr. Wang
13 Decl. ¶¶ 5–8. Accordingly, even if the Court had jurisdiction—which it does not—Petitioner has
14 failed to present evidence warranting emergency relief.

15 The only evidence Petitioner put forth was attached to his habeas Petition, but
16 unreferenced in his TRO, Petitioner submitted a medical declaration from Dr. William Weber as
17 Exhibit 1 (“Dkt. 1-1”). *See* Dkts. 1, 10, 12–13. Dr. Weber admits that he has never met with,
18 spoken to, or examined Petitioner; that he is not licensed to practice medicine in Washington
19 State; and that his opinions are based solely on a review of Petitioner's medical records. Dkt. 1-1
20 ¶¶ 1, 3. He does not claim familiarity with the Northwest ICE Processing Center or its medical
21 capabilities. *See generally* Dkt. 1-1.

22 Dr. Weber speculates that the “carceral setting” has been harmful to Petitioner's HIV, that
23 “overseas transport could be risky,” and that Petitioner could face a “high risk of death” if
24 removed to a country without a “developed health infrastructure.” Dkt. 1-1 ¶ 4. Dr. Weber does

1 not identify which countries he believes lack adequate medical infrastructure, does not analyze
2 Mexico's healthcare system, and does not opine that removal to Mexico would pose a
3 particularized medical risk to Petitioner. *See generally* Dkt. 1-1. Such generalized speculation—
4 untethered to the designated receiving country—cannot support habeas relief and, in any event,
5 raises issues for which this court lacks jurisdiction.

6 Notably, Petitioner does not rely on Dr. Weber's declaration at all in his emergency
7 motion. *See* Dkt. 16. Instead, he cites only a generalized news article that is not specific to
8 Petitioner, his medical condition, or his prospective country of removal. Dkt. 16, Ex. 1. The
9 emergency motion therefore offers no competent, individualized evidence to support its assertions
10 and cannot satisfy Petitioner's burden for extraordinary relief.

11 In any event, Petitioner has already received due process protections for third-country
12 claims, and any fear of inadequate medical care should have been addressed in that setting.
13 Hammer Decl. ¶¶ 6–11. He was afforded a USCIS credible fear interview, which resulted in a
14 negative fear determination. *Id.* His disagreement with that outcome does not create jurisdiction
15 where Congress has expressly foreclosed it.

16 Thus, Petitioner fails to demonstrate a likelihood of success on the merits sufficient to
17 warrant the extraordinary relief he seeks.

18 **2. Petitioner is unlikely to suffer irreparable harm in the absence of preliminary**
19 **relief.**

20 Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory
21 injunctive relief he seeks. To do so, he must demonstrate “immediate threatened injury.”
22 *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los*
23 *Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th
24 Cir.1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555

1 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of irreparable harm is
2 inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary
3 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
4 *Winter*, 555 U.S. at 22.

5 Here, Petitioner has not established that irreparable injury is likely in the absence of an
6 injunction. *Id.* A habeas petition is not a vehicle to indefinitely evade removal. *Zadvydas v. Davis*,
7 533 U.S. at 701; *Pelich v. I.N.S.*, 329 F.3d 1057, 1061 (9th Cir. 2003). Because Petitioner’s
8 removal is imminent, removal itself does not constitute irreparable harm; at most, the requested
9 relief would merely delay the inevitable.

10 Accordingly, Petitioner has failed to demonstrate that he will suffer immediate irreparable
11 injury absent release.

12 **3. The balance of the equities and public interests favor the Government.**

13 The final two factors for a preliminary injunction—the balance of hardships and public
14 interest—“merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. It is well-
15 settled that the public interest in enforcement of United States immigration laws is significant.
16 *See United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Nken*, 556 U.S. at 435 (“There
17 is always a public interest in prompt execution of removal orders: The continued presence of an
18 alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA
19 established, and permit[s] and prolong[s] a continuing violation of United States law.”). Petitioner
20 is subject to a final order of removal, and the government may detain him as a result, and it has
21 an interest in enforcing U.S. immigration laws. The government has a legitimate interest in the
22 continued detention of immigration detainees that is authorized by Congress and recognized by
23 the Supreme Court. Petitioner remains under mandatory detention pursuant to 8 U.S.C. § 1231(a)
24 pending his removal. Currently, the only bar to Petitioner’s removal is this habeas litigation.

1 Because Petitioner cannot show that the balance of hardships and public interest tips in his favor,
2 the Court should deny Petitioner's TRO Motion.

3 **III. CONCLUSION**

4 For the foregoing reasons, Petitioner has not satisfied his high burden of establishing
5 entitlement to mandatory or injunctive relief, and his emergency motion should be denied.
6 Further, Petitioner's detention has not become "indefinite," and his removal is significantly likely
7 in the reasonably foreseeable future. This Court should deny Petitioner's habeas petition.

8 DATED this 22nd day of January, 2026.

9 Respectfully submitted,

10 CHARLES NEIL FLOYD
11 United States Attorney

12 s/ Alixandria K. Morris
13 ALIXANDRIA K. MORRIS, TX#24095373
14 Assistant United States Attorney
15 Western District of Washington
16 United States Attorney's Office
17 1201 Pacific Avenue, Suite 700
18 Tacoma, Washington 98402
19 Phone: 253-428-3824
20 Email: alixandria.morris@usdoj.gov

21 *Attorney for Federal Respondents*

22 I certify that this memorandum contains 2,291 words, in
23 compliance with the Local Civil Rules.
24