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OSBER GABRIEL IZAAC UTUY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

OSBER GABRIEL IZAAC UTUY
Petitioner,

v.

KRISTI NOEM, Acting Secretary, United States Department of Homeland Security; RODNEY S. SCOTT, Commissioner, United States Customs and Border Protection; GREGORY J. ARCHAMBEAULT, in his official capacity as Acting Field Office Director for San Diego, U.S. Immigration and Customs Enforcement; DOUG GLEN, Special Agent in Charge for San Diego, Homeland Security Investigations, U.S. Immigration and Customs Enforcement; JEREMY CASEY, in his official capacity as Warden of Imperial Regional Detention Facility

Respondents.

Case No.

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

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I

INTRODUCTION

Petitioner in this case, OSBER GABRIEL IZAAC UTUY seeks a temporary restraining order directing his immediate release, and barring Respondents from transferring him from this district. An order directing his immediate release is warranted because petitioner has been away from his family for an extended period of time, and has no criminal convictions. Further, an order prohibiting transfer is warranted because Petitioner is likely to succeed on his underlying claim that he is entitled to a bond hearing. Unless he remains in this district, where he has counsel, where he has a support system, and where he lived (or lived close to) prior to this case, that right to hearing will be much less effective, and even meaningless.

II

STATEMENT OF FACTS

OSBER GABRIEL IZAAC UTUY is a 19-year-old male imprisoned by the federal government under color of the immigration laws under Alien Registration number [redacted] He is a resident of Los Angeles, California who was arrested while he was driving through an ICE check point while visiting friends in the Palm Desert area of Southern California. He is an unmarried young man, with no children. Mr. Izaac has applied for Trafficking Victims Protection Reauthorization Act (TVPRA). Mr. Izaac entered the United States before the age

of 18 and without parental supervision. Mr. Izaac has also applied for Special Immigrant Juvenile Status under INA § 101(a)(27)(J) [8 U.S.C. § 1101(a)(27)(J)], as a result of being abandoned by his parents.

In his petition and the accompanying motion for an order to show cause, Petitioner asserts that he is a member of the certified Bond Denial Class in Rodriguez Vazquez v. Bostock, No. 3:25-cv-05240-TMC (W.D. Wash. filed Mar. 20, 2025). Dkt. 1 ¶¶ 96–100. On September 30, 2025, this Court entered final judgment declaring all Bond Denial Class members in that case are detained under 8 U.S.C. § 1226(a) and are therefore entitled to a bond hearing before an immigration judge (IJ). Rodriguez Vazquez v. Bostock, No. 3:25-cv-05240-TMC, --- F. Supp. 3d ----, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

In addition, as Petitioner stated, and as reflected in the record, that individuals in his position have been denied a bond for lack of jurisdiction. Thus, Mr. Izaac's continued presence in this district is necessary to provide meaningful relief in this case.

IV

ARGUMENT

On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an

injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the "serious question" test, Mr. Izaac must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest.

I. Petitioners are likely to succeed on the merits.

The underlying claims in this case are ones on which Petitioner is plainly likely to succeed. This Court has already ruled in favor of plaintiffs and all class members in Rodriguez Vazquez v. Bostock, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ----, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). And even if this Court were to conclude that Petitioners are not class members in Rodriguez Vazquez, nearly all of the rationale of the Court's decision there applies to this case. See generally 2025 WL 2782499, at *16–26. And court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy and EOIR's new interpretation. See, e.g., Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Diaz Martinez v.

Hyde, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); Rosado v. Figueroa, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-2502157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Maldonado v. Olson, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); Romero v. Hyde, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); Ramirez Clavijo v. Kaiser, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); LealHernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Kostak v. Trump, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Jose J.O.E. v. Bondi, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); Lopez-Campos v. Raycraft, No. 2:25-cv-12486-BRM-EAS, --- F. Supp. 3d ----, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Vasquez Garcia v. Noem, No. 25-cv-02180DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Zaragoza Mosqueda v. Noem, No. 5:25CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); Jimenez v. FCI Berlin, Warden, 25-CV-326-LM-AJ, ---

F.Supp.3d ----, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); Pizarro Reyes v. Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); Aceros v. Kaiser, 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); Pablo Sequen v. Kaiser, No. 25-CV-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025); Maldonado Vazquez v. Feeley, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17 2025); Hasan v. Crawford, No. 1:25-CV-1408 (LMB/IDD), --- F. Supp. 3d. ----, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); Chogllo Chafla v. Scott, 2:25-CV-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); Belsai v. Bondi, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); Cerritos Echevarria v. Bondi, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); Buenrostro-Mendez v. Bondi, No. CV H-253726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); Ortiz Donis v. Chestnut, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); see also, e.g., Palma Perez v. Berg, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); Jacinto v. Trump, No. 4:25-cv03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); Anicasio v. Kramer, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). Notably, many of the cases cited above involve facts

similar to this one, where the noncitizens were initially apprehended, released soon thereafter, resided in the United States for many years, and have since be re-arrested. As those courts have explained, § 1226(a) remains the detention authority for such individuals. See, e.g., Gomes, 2025 WL 1869299; Diaz Martinez, 2025 WL 2084238; Rosado, 2025 WL 2337099; Lopez Benitez, 2025 WL 2371588; Maldonado, 2025 WL 2374411; Romero, 2025 WL 2403827; Samb, 2025 WL 2398831; Ramirez Clavijo, 2025 WL 2419263; Jimenez, 2025 WL 2639390; Sampiao, 2025 WL 2607924; Aceros, 2025 WL 2637503; Pablo Sequen, 2025 WL 2650637; Hasan, 2025 WL 2682255; Ortiz Donis, 2025 WL 2879514.

While this case is ultimately centered on Petitioner's right to a bond hearing, he notes that the "use of habeas for transfer claims is not novel." Trump v. J.G.G., 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). Indeed, "going back to the English Habeas Corpus Act of 1679, if not earlier, habeas corpus has been the proper vehicle for detainees to bring claims seeking to bar their transfers." Id. (Kavanaugh, J., concurring). Moreover, it is common practice for courts to enjoin the transfer of Petitioners while a habeas petition is pending, in order to ensure that the court can provide effective relief. See, e.g., Svenin v. Casey, No. 3:25-CV-01865CAB-KSC, 2025 WL 2917319, at *3 (S.D. Cal. Oct. 14, 2025) ("Courts typically enjoin the Government from transferring detainees out of the district during the pendency of the habeas proceedings."); cf. Cantero Garcia v. Wamsley,

No. 2:25-CV-02092-TMC, 2025 WL 3022252, at *2 (W.D. Wash. Oct. 29, 2025) (ordering pre-transfer notice, and explaining why such notice is necessary).

II. Petitioner will suffer irreparable harm absent a TRO.

Petitioner will also suffer irreparable harm absent an order barring transfer. First of all, the transfer of Mr. Izaac interferes with access to counsel (unless they consent), both in immigration proceedings and in this habeas petition. As Mr. Izaac's attorney, it is of critical importance that attorney remains in relative close proximity to Mr. Izaac in order to obtain signatures, and information. Courts have recognized that such interference with access to counsel is a form of irreparable harm, as it can have significant effects on a person's ability to defend or present their case. See, e.g., Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850, 879 (C.D. Cal. 2025); cf. Immigrant Defs. L. Ctr. v. Noem, 145 F.4th 972, 993 (9th Cir. 2025) ("Noncitizens' 'fundamental' right to counsel must be respected in substance as well as in name.'"); Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 566–67 (9th Cir. 1990) (upholding injunction "designed to ensure access to counsel," and explaining that the lower court's ordered created "appropriate remedies for a pattern of practices which severely impeded class members from communicating with counsel.").

Second, other forms of harm are also present here. If Mr. Izaac is transferred, he will be unable to be provided with vital familial support as he struggles with his detainment.

III. The balance of hardships and public interest warrant a TRO.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." Nken v. Holder, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of access to counsel, which greatly impairs his ability to challenge his unlawful detention and prepare for any bond hearing that is ordered. See supra Sec. II. Respondent, by contrast, faces no hardship with respect to the Petitioner that they have not yet transferred, as all they must do is refrain from transferring the Petitioner.

What is more, "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process." Hernandez, 872 F.3d at 996. That rationale applies here too, as but for Respondents' unlawful policy, Mr. Izaac would not be suffering from severe medical conditions without the assistance of a dedicated medical team and family. Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents refrain from transferring Mr. Izaac.

V

CONCLUSION

For the reasons above, the Court should order that Mr. Izaac be released immediately or that Respondents may not transfer Mr. Izaac from this district while this case is pending, unless Respondents obtain a final, executable order of removal.

Respectfully submitted this 18nd day of February, 2026

Carlos Barrios

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