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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ODILIO MISAEL ORELLANA REYES,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 3:26-cv-01756-CRB

RESPONDENTS' RESPONSE TO EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

Petitioner is not likely to succeed on the merits because he has not met his burden of providing good reason to believe that his detention is unlawful. Petitioner has a final order of removal, which was reinstated by the Department of Homeland Security ("DHS") On March 1, 2026. Therfoer he is subject to mandatory detention. Petitioner's pending relief does not prohibit his removal.

Moreover, all named Respondents besides the immediate custodian must be stricken. If Petitioner were to succeed on the petition, this Court should not grant any relief beyond simple release from custody. All other relief sought besides release from custody is inappropriate in habeas. The only relief that Petitioner's immediate custodian can provide is release from custody. Indeed, the immediate custodian cannot provide a pre-deprivation bond hearing. Petitioner inappropriately seeks the same ultimate relief he seeks in his underlying habeas petition, i.e., release from custody. But the issue of ultimate relief cannot be decided at the temporary restraining order or preliminary injunction stage. Additionally, through habeas, this Court cannot enjoin Petitioner's removal from the United States, nor can this Court prohibit Respondents from transferring Petitioner outside the District in the future. Lastly, Respondents request that, in denying Petitioner's request for a temporary restraining order, this Court grant Respondents a reasonable amount of time to prepare their return to the habeas petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Odilio Misael Orellana Reyes ("Petitioner"), is a native and citizen of Guatemala who entered the United States without inspection, admission, or parole at or near Falfurrias, Texas on or about June 9, 2017. Decl. of Deportation Officer Maika Rentería ("Rentería Decl.") at ¶ 5. On or about June 12, 2017, U.S. Customs and Border Protection ("CBP") Officers encountered and apprehended Petitioner and took him into custody for processing. *Id.* at ¶ 6. On that same day, CBP processed Petitioner for Expedited Removal pursuant to section 235(b)(1) of the Immigration and Nationality Act ("INA") [8 U.S.C. § 1225(b)(1)] as he was apprehended within fourteen days of his last entry into the United States and within 100 air miles from the United States/Mexico international boundary. *Id.* Petitioner did not claim to fear persecution or torture if returned to his country of citizenship. *Id.* On June 13, 2017, Petitioner was ordered removed pursuant to 8 U.S.C. § 1225(b)(1)(A)(i). *Id.* at ¶ 7, Ex. 1.

On June 21, 2017, Petitioner was removed from the United States via airplane from Valley International Airport in Harlingen, TX to La Aurora International Airport in Guatemala City, Guatemala. *Id.* at ¶ 8, Ex. 1. Petitioner re-entered the United States on an unknown date and at an unknown time. *Id.* at ¶ 9

On March 1, 2026, ICE arrested Petitioner and transferred him to the San Francisco ERO Holding Facility for processing. *Id.* at 10. Petitioner received a medical screening conducted by a medical professional during intake at the facility. *Id.* ICE reinstated Petitioner's prior removal order pursuant to 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8. *Id.* at ¶ 10, Ex. 1. Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(2). *See Johnson v. Guzman Chavez,* 594 U.S. 523, 535 (2021). On the same day, ICE transported Petitioner from the San Francisco ERO Holding Facility to the Mesa Verde ICE Processing Facility in Bakersfield, CA. Rentería Decl. at ¶ 10. Petitioner left the San Francisco ERO Holding Facility at approximately 2:30 p.m. *Id.* The transport containing Petitioner arrived at the ERO Field Office in Stockton, CA at approximately 3:40 p.m. *Id.* Petitioner then left the Stockton Field Office towards the Mesa Verde ICE Processing Facility at approximately 7:30 p.m. *Id.*

Petitioner has not received work authorization or a Bona Fide Determination ("BFD") from U.S. Citizenship and Immigration Services ("USCIS") based on his pending U visa application. Dkt. No. 7 at 2. Petitioner filed the instant Petition for Writ Of Habeas Corpus at approximately 3:00 p.m. Dkt. No. 101.

III. LEGAL STANDARD

A. The Temporary Restraining Order Standard

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *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, one 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). To obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary

1 While it is unclear from the facts available and the inability to investigate further due to the short time for a response to the TRO, this Court may lack jurisdiction on this petition due to Petitioner's location at the time of the filing of the Petition.

relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action." *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Courts have also denied preliminary relief where the relief the plaintiff seeks is the same relief sought on the merits, because "[j]udgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Mendez v. ICE*, No. 23-cv-829, 2023 WL 2604585 at *3 (N.D. Cal., Mar. 15, 2023) (quoting *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

B. Detention of Noncitizens Under 8 U.S.C. § 1231

The detention of noncitizens subject to a final order of removal is governed under 8 U.S.C. § 1231. Section 1231(a)(2) provides that the government "shall detain" the noncitizen for a 90-day "removal period," the commencement of which can be triggered by various events in the noncitizen's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter, the noncitizen "may be detained beyond the [90-day] removal period" if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).

Section 1231(a) does not provide for a bond hearing for the noncitizen to challenge their detention. *See Guzman Chavez*, 594 U.S. at 526. Rather, noncitizens subject to final orders of removal can request review of their detention after the expiration of the 90-day removal period "where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). However, the Supreme Court has recognized that detention of up to six months to effectuate the removal of a noncitizen is "presumptively reasonable" and constitutionally valid. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); *see also* 8 C.F.R. 241.13(i)(1) ("The alien may be continued in detention for an additional six months in order to effect the alien's removal…").

In the case where a noncitizen is not removed within the 90-day removal period, section 1231(a) provides that the noncitizen may be released and "shall be subject to supervision". 8 U.S.C. §§ 1231(a)(3), (6). Noncitizens released after the removal period and subject to the order of supervision are required to abide by specific conditions of supervision. *See* 8 C.F.R. § 241.5. An order of supervision may be revoked and a noncitizen may be re-detained past the removal period, among other reasons if "it is appropriate to enforce a removal order . . . against an alien". 8 C.F.R. § 241.4(l)(2); *see also* 8 C.F.R. § 241.13(i) (permitting revocation of an order of supervision if "there is a significant likelihood that the alien may be removed in the reasonably foreseeable future"). Upon revocation of an order of supervision, ICE must notify the noncitizen of the reasons for revocation of his release. 8 C.F.R. §§ 241(l)(1), 241.13(i)(3). After ICE takes a noncitizen into custody, ICE must provide the noncitizen with an informal interview to afford him an opportunity to respond to the reasons for notification. 8 C.F.R. §§ 241(l)(1), 241.13(i)(3).

If an alien reenters the United States illegally after having been removed under an order of removal, their prior removal order is reinstated. *See* 8 U.S.C. § 1231(a)(5). Aliens subject to reinstated orders of removal are subject to the detention provisions in 8 U.S.C. § 1231. *See Guzman Chavez*, 594 U.S. at 535. Regulations set out the process for reinstating an order of removal. *See* 8 C.F.R. §§ 241.8(a)–(c).

IV. ARGUMENT

A. Petitioner Is Unlikely To Succeed On The Merits Of His Claim

1. Petitioner Is Not Likely To Succeed On His Unlawful Detention Claims

Petitioner is not likely to succeed on his various unlawful re-detention claims because the government has explicit statutory authority to re-detain him for the purposes of effectuating his removal.

(i) Detention Is Permitted to Effectuate Removal

The statute governing detention in this case, 8 U.S.C. § 1231, expressly permits an alien like Petitioner, who is subject to a reinstated removal order, to be detained *See* 8 U.S.C. § 1231(a)(2). The constitutional limit to this detention is set forth in *Zadvydas*. *See also Guzman Chavez,* 594 U.S. at 535.

(ii) Petitioner Is Not Entitled To A Hearing Before A Neutral Arbitrator Prior To Revocation Of His Release

The Supreme Court has made clear that "there is no plausible construction of the text of section 1231(a)(6) that requires the Government to provide bond hearings before immigration judges after six months of detention, with the Government bearing the burden of providing by clear and convincing evidence" that a detained noncitizen poses a flight risk and a danger to the community. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022). What applies to immigration judges certainly applies no less to district court judges.

Just as § 1231(a)(6) "does not address or even hint at the requirements," for a bond hearing following the six-month mark of immigration detention, *id.* at 580–81 (quotation omitted), it similarly does not require a hearing before immigration authorities can re-detain an alien who was previously on an order of supervision pending removal. *See* 8 U.S.C. § 1231(a)(6). Such an order would contradict the plain language of 8 C.F.R. § 241.8, which governs reinstatement of removal orders, and would deprive immigration authorities of their operational discretion and regulatory authority to take the actions necessary to effectuate the deportation of aliens illegally in the United States.

The Due Process Clause does not prohibit Petitioner's detention.[2] Although the Fifth Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due aliens must account for the

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[2] In *Arteaga-Martinez*, the Supreme Court declined to decide whether a bond hearing is constitutionally required if detention is prolonged under § 1231(a)(6). *Arteaga-Martinez*, 596 U.S. at 583.

government's countervailing interests in immigration enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government, which are core sovereign powers." *Id.* To the extent that Petitioner asks this Court to apply Due Process rights afforded to incarcerated United States citizens to him, the Supreme Court has expressly stated that those precedents do not apply.[3] *Rodriguez Diaz*, 53 F.4th at 1205-06.

2. Petitioner Has Not Met His Burden to Show Likely Irreparable Harm Without Immediate Injunctive Relief

Petitioner has not articulated an irreparable harm that can only be remedied with immediate injunctive relief. The fact that ICE has operational discretion to detain Petitioner based on the reinstated removal order is not extraordinary—rather, it is an authorized part of the removal process. Immigration laws have long authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523–26. "Detention is necessarily a part of [the] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

3. The Balance of Equities and Public Interest

When the government is a party, the third and fourth preliminary injunction factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). "The government's interest in

[3] *Young v. Harper*, 520 U.S. 143 (1997) (Dkt. No. 2 at 14); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (Dkt. No. 2 at 14-15); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (Dkt. No. 2 at 14-17, 19); *Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010) (Dkt. No. 2 at 15, 17); *Hurd v. Dist. of Columbia*, 864 F.3d 671 (D.C. Cir. 2017) (Dkt. No. 2 at 13, 17); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (Dkt. No. 2 at 15); *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc) (Dkt. No. 2 at 16-17); *Zinermon v. Burch*, 494 U.S. 113 (1990) (Dkt. No. 2 at 16); *Youngberg v. Romero*, 457 U.S. 307 (1982) (Dkt. No. 2 at 17); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (Dkt. No. 2 at 17); *United States v. Knights*, 534 U.S. 112 (2001) (Dkt. No. 2 at 17); *Griffin v. Wisconsin*, 483 U.S. 868 (1987) (Dkt. No. 2 at 17); *Foucha v. Louisiana*, 504 U.S. 71 (1992) (Dkt. No. at 18).

efficient administration of the immigration laws" is "weighty," and "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Further, the government's interest in protecting the public and preventing deportable non-citizens from fleeing is strong and compelling. See, e.g., *Rodriguez Diaz*, 53 F.4th at 1208 (The government's interests in the prompt execution of removal orders are "interests of the highest order that only increase with the passage of time" and the "risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent."). The government's interest in deporting Petitioner and protecting the public in the meantime, is compelling in this case, given his prior removal order and illegal reentry. These interests outweigh any interest Petitioner may have in continuing on release for whatever limited time he has left before being removed from the United States.

Moreover, months long court delays in getting pre-deprivation hearings even scheduled – *see Guillermo M.R. v. Kaiser*, 3:25-cv-5436, Dkt. No. 39 (N.D. Cal. Jun. 29, 2025) ("[O]n August 12, 2025, the Immigration Court granted the motion of Respondent Department of Homeland…to schedule a pre-deprivation bond hearing for Petitioner. The hearing was scheduled for January 20, 2026.") – means that the imposition of a pre-deprivation hearing requirement could functionally forever enjoin Petitioner's removal.

B. All Named Respondents Besides the Immediate Custodian Must Be Stricken

Respondents move for all Respondents other than Petitioner's immediate custodian to be dismissed from this case. The United States Court of Appeals for the Ninth Circuit squarely addressed this issue in *Doe v. Garland*, where it explained:

> Section 2242 states that habeas petitions "shall allege the facts concerning the applicant's commitment or detention, the name of *the* person who has custody over him and by virtue of what claim or authority, if known." 28 U.S.C. § 2242 (emphasis added). The plain text of the federal habeas implementation provision delineates that petitions must include the name of "the" person maintaining custody over the petitioner, *id.*, implying that there is typically only one proper respondent to a habeas petition. *See* [*Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004)] (stating that "[t]he consistent use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner's habeas petition"). Section 2243, which governs issuance of the writ, states that "[t]he writ, or order to show cause shall be directed to *the* person having custody of the person detained." 28 U.S.C. § 2243 (emphasis added). Not

> unlike 28 U.S.C. § 2242, Congress chose to use a definite article, "the," to make clear that only one person can be said to maintain custody over the detained petitioner, and that person is the proper respondent to a core habeas challenge. *See Padilla*, 542 U.S. at 434–35, 124 S.Ct. 2711; *see also United States v. Lopez*, 4 F.4th 706, 721 (9th Cir. 2021) (stating that "definite articles like 'the' restrict the noun that follows as particularized in scope or previously specified by context"). Accordingly, *Padilla* explained definitively who that one proper respondent is: "in habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *See Padilla*, 542 U.S. at 435, 124 S.Ct. 2711.

109 F.4th 1188, 1195 (9th Cir. 2024). Thus, there is exclusively one proper respondent to a habeas petition and that is Petitioner's immediate custodian.

C. Any Relief Besides Release from Custody Is Inappropriate in Habeas

The only relief available in habeas is release from custody. The Supreme Court has long held that "the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). In *Dep't of Homeland Sec. v. Thuraissigiam*, the Supreme Court denied a habeas petition from an alien in immigration detention because he "seeks to use habeas to obtain something far different from simple release." 591 U.S. 103, 121 (2020); *see also Munaf v. Geren,* 553 U.S. 674, 694 (2008) (denying a habeas petition because petitioners sought relief other than "simple release"). Any relief granted to Petitioner beyond "simple release" should be denied because "Claims so far outside the 'core' of habeas may not be pursued through habeas." *Id.* at 119.

D. Petitioner's Immediate Custodian Can Only Provide Release from Custody

Petitioner's immediate custody cannot provide any relief besides release from custody. "Remedies…'operate with respect to specific parties.'" *California v. Texas*, 593 U.S. 659, 672 (2021) (quoting *Murphy* v. *National Collegiate Athletic Assn.*, 138 S.Ct. 1461 1486 (2018) (Thomas, J., concurring) (internal quotation marks omitted)). Ordering any other relief in this case, besides release from custody, would be inappropriate. Most relevant here, Petitioner's immediate custodian lacks the capability and authority to conduct a pre-deprivation bond hearing. Thus, the Court cannot order Petitioner's immediate custodian to conduct any such hearing.

E. The Issue of Ultimate Relief Must Not Be Decided in A TRO

The only appropriate relief sought by Petitioner in the motion for a TRO, i.e., release from custody, is the same ultimate relief Petitioner seeks in the underlying habeas petition. Consequently, the relief Petitioner seeks in the motion for a TRO is not "temporary" or "preliminary" but rather it is effectively final judgment on the merits of the habeas petition. "[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *see also Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992) ("[J]udgment on the merits in the guise of preliminary relief is a highly inappropriate result."). This result is particularly inappropriate when the TRO granting ultimate relief is issued ex-parte, without the opportunity for effective preparation of Respondents' counsel and Respondents' right to be heard.

Because Petitioner's motion for a TRO and habeas petition both seek release from detention, the Court must deny the motion for a TRO. *See, e.g., Rodas v. Samiea*, No. 5:26-cv-65, 2026 WL 184226, at *1 (C.D. Cal. Jan. 19, 2026) (denying petitioner's request for release from immigration detention on motion for TRO because it is "duplicative of his request for that same relief on the merits"); *Aslan v. Wamsley*, No. 2:25-cv-2698, 2026 WL 84000, at *2 (W.D. Wash. Jan. 12, 2026) (denying immigration habeas TRO seeking release because "[t]he appropriate vehicle for resolving Aslan's due process claim is his habeas petition."); *Dzhanpolatov v. USCIS,* No. 25-cv-3314, 2025 WL 1652427, at *2 (N.D. Cal. May 26, 2025) (denying a motion for TRO because "while characterized as preliminary relief, Dzhanpolatov effectively seeks judgment on the merits."); *Chavez v. Murray*, No. 1:25-cv-198, 2025 WL 1017678, at *2 (E.D. Cal. Apr. 4, 2025) (denying a motion for TRO because it "seeks only to alter the status quo by issuing an expedited order that would grant him the ultimate relief he seeks in his petition."); *Keo v. Warden of Mesa Verde ICE Processing Ctr.*, No. 1:24-cv-919, 2024 WL 3970514, at *2 (E.D. Cal. Aug. 28, 2024); *Mendez ,* WL 2604585, at *3.

F. This Court Cannot Enjoin Petitioner's Removal from The United States

The Court lacks jurisdiction to enjoin respondents from removing Petitioner from the United States. Under 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This jurisdictional bar applies to section 28 U.S.C. § 2241 and any other habeas provision. *Id.* Thus, as the Ninth Circuit has itself affirmed, if the Court grants a TRO, it should not include a prohibition on the removal of Petitioner. *See Rauda v. Jennings*, 55 F.4th at 776-79 (holding that the district court lacked jurisdiction in habeas to issue TRO enjoining an alien's removal pursuant to his final order of removal).

The Court also lacks jurisdiction to enjoin removal under 8 U.S.C. § 1252(b)(9). *See Khalil v. President, United States*, 164 F.4th 259, 273 (3d Cir. 2026). That subsection provides: "Judicial review of all questions of law and fact... arising from any action taken or proceeding brought to remove an alien from the United States ... shall be available only in judicial review of a final order [of removal]." 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Accordingly, the only proper way for Petitioner to enjoin his removal is before the appropriate federal court of appeals in the form of a petition for review of the reinstatement of his removal order. Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e).

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed only through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see also Viloria v. Lynch*, 808 F.3d 764, 767 (9th Cir. 2015) ("It is well established that this court's jurisdiction over removal proceedings is limited to review of final orders of removal.").[4] Habeas, then, is not the proper vehicle to enjoin removal.

[4] The Ninth Circuit has held that, "By its terms, [§ 1252(b)(9)] does not apply to federal habeas corpus petitions that do not involve final orders of removal." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006). However, that decision predates and conflicts with *Jennings v. Rodriguez*, which noted that § 1252(b)(9) strips jurisdiction to "challeng[es] [to] the decision to detain [aliens] in the first place or to seek removal," challenges to "any part of the process by which... removability will be determined," and requests to "review... an order of removal." *Jennings v. Rodriguez* ,583 U.S. 281, 294 (2018). Moreover, *Nadarajah* itself did not enjoin removal.

Additionally, if Petitioner expresses a fear of returning to his country of citizenship, the INA and regulations provide him a route for pursuing that relief. *See* 8 U.S.C. § 1231(b)(3)(a); 8 C.F.R. § 241.8(e).

G. The Court Cannot Prohibit Respondents from Transferring Petitioner Between Detention Facilities

The Court cannot order that Petitioner remain in the District. Regardless of whether Petitioner is detained within the Northern District of California, no order from the Court preventing transfer is necessary to preserve this Court's jurisdiction. It is well-established that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). And even if Petitioner is transferred outside the District, the District Court will retain jurisdiction over the habeas petition. *See Ex Parte Endo,* 323 U.S. 283, 307 (1944). Any claims regarding potential future transfer between detention facilities within the District or to detention facilities outside the District are mere speculation. Thus, there is no basis for the Court to prohibit Petitioner's transfer.

H. Respondents Should be Granted a Reasonable Amount of Time to Prepare their Return to the Habeas Petition

Because Petitioner's request for ultimate relief can only be decided following consideration of full briefing on the underlying habeas petition, Respondents request that this Court set a reasonable briefing schedule so that Respondents' counsel may review agency records and adequately prepare their response. *See, e.g., Aslan v. Wamsley*, 2026 WL 84000, at *1-3 (denying TRO seeking release from custody and permitting respondents eighteen days to file a return to the habeas petition).

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny Petitioner's request for a TRO and dismiss Petitioner's habeas petition.

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Dated: March 2, 2026

Respectfully submitted,

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/s/ Michael Starrett
MICHAEL J. STARRETT
Special Assistant United States Attorney

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