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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 ODILIO MISAEL ORELLANA REYES,

13 Petitioner,

14 v.

15 SERGIO ALBARRAN, et al.,

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

**RESPONDENTS' RESPONSE TO MOTION
FOR PRELIMINARY INJUNCTION**

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1 **I. INTRODUCTION**

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

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

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 Petitioner Odilio Misael Orellana Reyes (“Petitioner”) is a native and citizen of Guatemala who
19 entered the United States without inspection, admission, or parole at or near Falfurrias, Texas on or
20 about June 9, 2017. Dkt. No. 8-1 ¶ 5. On or about June 12, 2017, U.S. Customs and Border Protection
21 (“CBP”) Officers encountered and apprehended Petitioner and took him into custody for processing. *Id.*
22 ¶ 6. On that same day, CBP processed Petitioner for Expedited Removal pursuant to section 235(b)(1) of
23 the Immigration and Nationality Act (“INA”) [8 U.S.C. § 1225(b)(1)] as he was apprehended within
24 fourteen days of his last entry into the United States and within 100 air miles from the United
25 States/Mexico international boundary. *Id.* Petitioner did not claim to fear persecution or torture if
26 returned to his country of citizenship. *Id.* On June 13, 2017, Petitioner was ordered removed pursuant to
27 8 U.S.C. § 1225(b)(1)(A)(i). *Id.* ¶ 7; Dkt. No. 8-2. On June 21, 2017, Petitioner was removed from the

1 United States via airplane from Valley International Airport in Harlingen, TX to La Aurora International
2 Airport in Guatemala City, Guatemala. Dkt. Nos. 8-1 ¶ 8; 8-2. Petitioner re-entered the United States on
3 an unknown date and at an unknown time. Dkt. No. 8-1 ¶ 9

4 On March 1, 2026, ICE, in collaboration with CBP, encountered Petitioner during a vehicle stop.
5 Suppl. Decl. of Deportation Officer Maika Rentería (“Rentería Suppl. Decl.”) ¶ 6, Ex. 1. Petitioner
6 provided ICE with his California Driver License and a Guatemala Consular ID Card, with his name on
7 both forms of identification. *Id.* Petitioner then gave a consensual interview, where he stated that his
8 name is Odilio Misael Orellana-Reyes, he was born in Guatemala on [REDACTED] and self-admitted
9 that he re-entered the U.S. illegally at an unknown time and unknown location approximately in 2017.
10 *Id.* ICE and CBP performed immigration system checks which came back with positive results. *Id.* ICE
11 informed Petitioner that he is under arrest for immigration violation and arrested Petitioner for the first
12 time since his unlawful re-entry. *Id.* ICE transferred Petitioner to the San Francisco ERO Holding
13 Facility for processing. Dkt. No. 8-1 ¶ 10. Petitioner received a medical screening conducted by a
14 medical professional during intake at the facility. *Id.* ICE reinstated Petitioner’s prior removal order
15 pursuant to 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8. *Id.* ¶ 10; Dkt. No. 8-2. Petitioner is detained
16 pursuant to 8 U.S.C. § 1231(a)(2). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 535 (2021). On the
17 same day, ICE transported Petitioner from the San Francisco ERO Holding Facility to the Mesa Verde
18 ICE Processing Facility in Bakersfield, CA. Dkt. No. 8-1 ¶ 10. Petitioner left the San Francisco ERO
19 Holding Facility at approximately 2:30 p.m. *Id.* The transport containing Petitioner arrived at the ERO
20 Field Office in Stockton, CA at approximately 3:40 p.m. *Id.* Petitioner then left the Stockton Field
21 Office towards the Mesa Verde ICE Processing Facility at approximately 7:30 p.m. *Id.*

22 Petitioner has not received work authorization or a Bona Fide Determination (“BFD”) from U.S.
23 Citizenship and Immigration Services (“USCIS”) based on his pending U visa application. Dkt. No. 7 at
24 2.

25 On March 1, 2026, Petitioner filed the instant Petition for Writ Of Habeas Corpus at
26 approximately 3:00 p.m., as well as an ex parte motion for a temporary restraining order (“TRO”). Dkt.
27 Nos. 1; 2. The same day, the Honorable Vince Chhabria, U.S. District Judge, issued an order requiring

1 Respondents to file a response to the TRO by noon on March 2, 2026. Dkt. No. 4. On March 2, 2026,
2 Respondents timely filed a response to the TRO, and on the same day, Petitioner filed a reply. Dkt. Nos.
3 8; 10. On March 3, 2026, the Court held a hearing on the TRO before issuing an order denying the TRO,
4 setting a briefing schedule for a motion for preliminary injunction, and ordering the Respondents to not
5 deport the Petitioner until the preliminary injunction has been adjudicated. Dkt. Nos. 15; 16.

6 **III. LEGAL STANDARD**

7 **A. The Preliminary Injunction Standard**

8 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted
9 unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d
10 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that “he is likely to succeed on
11 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
12 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC*,
13 555 U.S. 7, 20 (2008).

14 The purpose of a preliminary injunction is to preserve the status quo pending final judgment
15 rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software,*
16 *Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take two forms.” *Marlyn*
17 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). “A prohibitory
18 injunction prohibits a party from taking action and ‘preserves the status quo pending a determination of
19 the action on the merits.’” *Id.* (internal quotation omitted). “A mandatory injunction orders a responsible
20 party to take action.” *Id.* at 879 (internal quotation omitted). “A mandatory injunction goes well beyond
21 simply maintaining the status quo pendente lite and is particularly disfavored.” *Id.* “In general,
22 mandatory injunctions are not granted unless extreme or very serious damage will result and are not
23 issued in doubtful cases.” *Id.* Where plaintiffs seek a mandatory injunction, “courts should be extremely
24 cautious.” *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted).
25 The moving party “must establish that the law and facts *clearly favor* [their] position, not simply that
26 [they are] likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis
27 original). Courts have also denied preliminary relief where the relief the plaintiff seeks is the same relief
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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. Additionally, Petitioner’s pending U visa application has “no effect on ICE’s authority to execute a final order”. 8 C.F.R. § 214.14(c)(1)(ii). Petitioner filed for a stay of removal with ICE on March 2, 2026. *See* Dkt. No. 10-2; *see also* 8 C.F.R. §§ 241.6(a), 1241.6(a) (authorizing administrative stays of removal). However, if the stay is granted by ICE, it is only a stay of removal, not a stay of detention. *See* 8 C.F.R. § 214.14(c)(i)(ii) (“If the alien is in detention pending execution of the final order, the time during which a stay is in effect will extend the period of detention (under the standards of 8 C.F.R. § 241.4) reasonably necessary to bring about the petitioner’s removal.”). Finally, even if ICE effectuates the removal order against Petitioner, USCIS still has jurisdiction to adjudicate the U visa when Petitioner is

1 outside the United States. *See* 8 C.F.R. § 214.14(c)(5)(i)(B).

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

4 The Supreme Court has made clear that “there is no plausible construction of the text of section
 5 1231(a)(6) that requires the Government to provide bond hearings before immigration judges after six
 6 months of detention, with the Government bearing the burden of providing by clear and convincing
 7 evidence” that a detained noncitizen poses a flight risk and a danger to the community. *Johnson v.*
 8 *Arteaga-Martinez*, 596 U.S. 573, 581 (2022). What applies to immigration judges certainly applies no
 9 less to district court judges.

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

17 The Due Process Clause does not prohibit Petitioner’s detention.¹ Although the Fifth
 18 Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause
 19 “consistent with longstanding precedent recognizing that the process due aliens must account for the
 20 government’s countervailing interests in immigration enforcement – considerations that do not apply to
 21 U.S. citizens.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022). It is well-established
 22 that “Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Demore v.*
 23 *Kim*, 538 U.S. 510, 522 (2003). This is true because “any policy toward aliens is vitally and intricately
 24 interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power,
 25 and the maintenance of a republican form of government, which are core sovereign powers.” *Id.* To the

26
 27 ¹ In *Arteaga-Martinez*, the Supreme Court declined to decide whether a bond hearing is
 28 constitutionally required if detention is prolonged under § 1231(a)(6). *Arteaga-Martinez*, 596 U.S. at
 583.

1 extent that Petitioner asks this Court to apply Due Process rights afforded to incarcerated United States
 2 citizens to him, the Supreme Court has expressly stated that those precedents do not apply.² *Rodriguez*
 3 *Diaz*, 53 F.4th at 1205-06.

4 2. **Petitioner Has Not Met His Burden to Show Likely Irreparable Harm** 5 **Without Immediate Injunctive Relief**

6 Petitioner has not articulated an irreparable harm that can only be remedied with immediate
 7 injunctive relief. The fact that ICE has operational discretion to detain Petitioner based on the reinstated
 8 removal order is not extraordinary—rather, it is an authorized part of the removal process. Immigration
 9 laws have long authorized immigration officials to charge aliens as removable from the country, to arrest
 10 aliens subject to removal, and to detain aliens pending removal. *Demore*, 538 U.S. at 523–26.
 11 “Detention is necessarily a part of [the] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538
 12 (1952); *see Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release
 13 pending deportation, committing that determination to the discretion of the Attorney General.”).

14 3. **The Balance of Equities and Public Interest**

15 When the government is a party, the third and fourth preliminary injunction factors merge.
 16 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). “The government’s interest in
 17 efficient administration of the immigration laws” is “weighty,” and “it must weigh heavily in the balance
 18 that control over matters of immigration is a sovereign prerogative, largely within the control of the
 19 executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Further, the government’s
 20 interest in protecting the public and preventing deportable non-citizens from fleeing is strong and
 21 compelling. *See, e.g., Rodriguez Diaz*, 53 F.4th at 1208 (The government’s interests in the prompt
 22 execution of removal orders are “interests of the highest order that only increase with the passage of

23 ² *Young v. Harper*, 520 U.S. 143 (1997) (Dkt. No. 2 at 14); *Gagnon v. Scarpelli*, 411 U.S. 778
 24 (1973) (Dkt. No. 2 at 14-15); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (Dkt. No. 2 at 14-17, 19);
 25 *Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010) (Dkt. No. 2 at 15, 17); *Hurd v. Dist. of*
 26 *Columbia*, 864 F.3d 671 (D.C. Cir. 2017) (Dkt. No. 2 at 13, 17); *Johnson v. Williford*, 682 F.2d 868, 873
 27 (9th Cir. 1982) (Dkt. No. 2 at 15); *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en banc) (Dkt.
 28 No. 2 at 16-17); *Zinerman 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).

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.

1 109 F.4th 1188, 1195 (9th Cir. 2024). Thus, there is exclusively one proper respondent to a habeas
 2 petition and that is Petitioner's immediate custodian.

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

4 The only relief available in habeas is release from custody. The Supreme Court has long held
 5 that "the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*,
 6 411 U.S. 475, 484 (1973). In *Dep't of Homeland Sec. v. Thuraissigiam*, the Supreme Court denied a
 7 habeas petition from an alien in immigration detention because he "seeks to use habeas to obtain
 8 something far different from simple release." 591 U.S. 103, 121 (2020); *see also Munaf v. Geren*, 553
 9 U.S. 674, 694 (2008) (denying a habeas petition because petitioners sought relief other than "simple
 10 release"). Any relief granted to Petitioner beyond "simple release" should be denied because "Claims so
 11 far outside the 'core' of habeas may not be pursued through habeas." *Id.* at 119.

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

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

20 **E. The Issue of Ultimate Relief Must Not Be Decided in a Preliminary Injunction**

21 The only appropriate relief sought by Petitioner in the motion for a preliminary injunction, i.e.,
 22 release from custody, is the same ultimate relief Petitioner seeks in the underlying habeas petition.
 23 Consequently, the relief Petitioner seeks is not "temporary" or "preliminary" but rather it is effectively
 24 final judgment on the merits of the habeas petition. "[I]t is generally inappropriate for a federal court at
 25 the preliminary-injunction stage to give a final judgment on the merits." *Univ. of Tex. v. Camenisch*, 451
 26 U.S. 390, 395 (1981); *see also Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)
 27 ("[J]udgment on the merits in the guise of preliminary relief is a highly inappropriate result."). This
 28

1 result is particularly inappropriate when the TRO granting ultimate relief is issued ex-parte, without the
2 opportunity for effective preparation of Respondents' counsel and Respondents' right to be heard.

3 Because Petitioner's motion for a preliminary injunction and habeas petition both seek release
4 from detention, the Court must deny the motion. *See, e.g., Rodas v. Samiea*, No. 5:26-cv-65, 2026 WL
5 184226, at *1 (C.D. Cal. Jan. 19, 2026) (denying petitioner's request for release from immigration
6 detention on motion for TRO because it is "duplicative of his request for that same relief on the merits");
7 *Aslan v. Wamsley*, No. 2:25-cv-2698, 2026 WL 84000, at *2 (W.D. Wash. Jan. 12, 2026) (denying
8 immigration habeas TRO seeking release because "[t]he appropriate vehicle for resolving Aslan's due
9 process claim is his habeas petition."); *Dzhanpolatov v. USCIS*, No. 25-cv-3314, 2025 WL 1652427, at
10 *2 (N.D. Cal. May 26, 2025) (denying a motion for TRO because "while characterized as preliminary
11 relief, Dzhanpolatov effectively seeks judgment on the merits."); *Chavez v. Murray*, No. 1:25-cv-198,
12 2025 WL 1017678, at *2 (E.D. Cal. Apr. 4, 2025) (denying a motion for TRO because it "seeks only to
13 alter the status quo by issuing an expedited order that would grant him the ultimate relief he seeks in his
14 petition."); *Keo v. Warden of Mesa Verde ICE Processing Ctr.*, No. 1:24-cv-919, 2024 WL 3970514, at
15 *2 (E.D. Cal. Aug. 28, 2024); *Mendez*, WL 2604585, at *3.

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

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

26 The Court also lacks jurisdiction to enjoin removal under 8 U.S.C. § 1252(b)(9). *See Khalil v.*
27 *President, United States*, 164 F.4th 259, 273 (3d Cir. 2026). That subsection provides: "Judicial review
28

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 Vilorio 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.”).³ Habeas, then, is not the proper vehicle to 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

³ 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.

1 detained within the Northern District of California, no order from the Court preventing transfer is
 2 necessary to preserve this Court's jurisdiction. It is well-established that "when the Government moves a
 3 habeas petitioner after she properly files a petition naming her immediate custodian, the District Court
 4 retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal
 5 authority to effectuate the prisoner's release." *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). And even
 6 if Petitioner is transferred outside the District, the District Court will retain jurisdiction over the habeas
 7 petition. *See Ex Parte Endo*, 323 U.S. 283, 307 (1944). Any claims regarding potential future transfer
 8 between detention facilities within the District or to detention facilities outside the District are mere
 9 speculation. Thus, there is no basis for the Court to prohibit Petitioner's transfer.

10 **H. Respondents Should be Granted a Reasonable Amount of Time to Prepare their** 11 **Return to the Habeas Petition**

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

17 **V. CONCLUSION**

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

20 Dated: March 19, 2026

Respectfully submitted,

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