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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Azamat Narynbekov

Petitioner

v.

WARDEN, of the Central Valley Annex Detention Facility; et al.,

Respondents

Civ. No.: 1:26-cv-05348 JLT-EPG

EMERGENCY MOTION FOR TEMPORARY RESTRINING ORDER

Agency No. [redacted]

I. INTRODUCTION

Petitioner respectfully moves for an emergency temporary restraining order ("TRO") directing his immediate release from immigration detention and prohibiting any transfer of his person outside this District while this habeas action is pending. This motion is subject to being moot if the Court determines in the first instance based on the face of the petition as intended by 28 U.S.C. § 2243 that Petitioner's custody is unlawful. In that event, the sole and sufficient remedy would be to grant the petition forthwith as the statute itself authorizes. The provision states:

"A court, justice or judge entertaining an application for a writ of habeas corpus

shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto."

The habeas statute provides "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia,* 372 U.S. 391, 400 (1963), overruled on other grounds, *Wainwright v. Sykes*, 433 U.S. 72 (1977). Given its purpose, "[t]he application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.,* 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); see also, e.g., *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) ("[R]emedy by petition for writ of habeas corpus . . . . is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.").

Congress's intent to provide an expeditious remedy is reflected in 28 U.S.C. § 2243. Under that statute, "[a] court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted." 28 U.S.C. § 2243. The custodian must file a return "within three days [of the OSC] unless for good cause additional time, not exceeding twenty days, is allowed." Id. (emphasis added). Consistent with these expeditious procedures, the statute further requires a hearing "not more than five days after the return," unless good cause is established. Id. These requirements ensure that courts "summarily hear and determine the facts, and dispose of the matter as law and justice require." *Id.*

This motion is filed concurrently and in conjunction with the habeas petition filed earlier today and incorporates the petition's numbered factual allegations by reference. Petitioner does not seek a remand for a bond hearing before an immigration judge. As alleged in the petition, the core defect is not merely the absence of a bond hearing, but the unlawfulness of the warrantless rearrest and the resulting custody itself.

Petitioner contends that if the Court finds the rearrest and present detention to be unlawful without basis in law or fact, the exclusive remedy that habeas and equity require is immediate release, not a remand for another round of litigation, together with an order

for anti-transfer relief necessary to preserve this Court's jurisdiction and prevent further irreparable harm.

A. RELIEF REQUESTED

Petitioner asks the Court to enter a temporary restraining order:

1. Directing Respondents to release Petitioner forthwith from civil immigration detention pending adjudication of the petition. In so doing, Petitioner asks the Court to also order Respondents to return all of his personal property unlawfully confiscated from him when he was rearrested in violation of the laws of the United States, which include his mobile cellular, his valid driver's license, his valid social security and the money that was taken from him;

2. Prohibiting Respondents from transferring Petitioner outside the Eastern District of California while this action is pending, absent prior order of this Court; and

3. Requiring Respondents to show cause on an expedited basis under 28 U.S.C. § 2243 why the writ should not be granted.

B. INCORPORATION BY REFERENCE

Petitioner incorporates by reference paragraphs 1 through 125 of the petition, filed concurrently herewith including the allegations concerning jurisdiction, venue, the prior Oklahoma habeas proceedings, the risk of transfer, Petitioner's release on recognizance after entry, his compliance with all conditions of release, his family and community ties, the warrantless rearrest in Oklahoma, the asserted detention under 8 U.S.C. § 1225(b), the absence of any bond forum, and the claims for relief arising under the Fourth and Fifth Amendments, the INA, the implementing regulations, the APA, and habeas corpus. See Pet. ¶¶ 1-125.

C. FACTUAL BACKGROUND

1. Petitioner entered the United States in late 2023, was encountered near entry, and was then released by the Government on an Order of Release on Recognizance, permitting him to remain at liberty while his immigration proceedings went forward. Pet. ¶¶ 23-25, 45-46. He thereafter pursued asylum and related protection, was placed in removal

proceedings under 8 U.S.C. § 1229a, obtained employment authorization, worked lawfully, married a United States citizen, and became the father of a United States citizen child. Pet. ¶¶ 25-28, 46.

2. The petition alleges that Petitioner complied with every condition of release and has no criminal history. Pet. ¶¶ 26-29, 62, 121. Nevertheless, on May 24, 2026, ICE rearrested him during a roadside traffic stop in Oklahoma, far from any port of entry and years after the Government had already exercised its discretion to release him into the interior while his case remained pending. Pet. ¶¶ 29, 31-35, 45-49, 61-65.
3. Petitioner further alleges that this rearrest was warrantless and unsupported by individualized probable cause, reasonable suspicion, or any lawful finding that he was likely to escape before a warrant could be obtained, in violation of the Fourth Amendment, 8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.8(c)(2)(ii). Pet. ¶¶ 76-87. After the rearrest, Respondents classified him as detained under 8 U.S.C. § 1225(b), thereby foreclosing any bond forum under current agency practice and leaving him confined without meaningful process to contest the legality of his custody. Pet. ¶¶ 31-37, 66-75, 88-90, 101-118, 122.
4. The petition also alleges that Petitioner was previously litigating his detention through habeas proceedings in the Western District of Oklahoma, where that court issued a notice-before-transfer order, and that he was nevertheless transferred to this District while the Oklahoma case remained pending. Pet. ¶¶ 3-14. Because Respondents retain unilateral authority to move detainees again, Petitioner alleges a concrete risk that another transfer will further delay merits review and impair this Court's jurisdiction unless interim anti-transfer relief issues now. Pet. ¶¶ 8-14.

D. LEGAL STANDARD

A temporary restraining order is warranted where the moving party shows likely success on the merits, likely irreparable harm absent relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. In this habeas proceeding, the

Court also has authority under 28 U.S.C. § 2243 to act forthwith on a petition challenging unlawful custody and to require a prompt return. Pet. ¶¶ 38-39.

Where a habeas petitioner shows extraordinary circumstances and a high probability of success, federal courts have inherent authority to order release pending adjudication. Pet. ¶¶ 98-100. That authority is especially appropriate where the injury is ongoing physical confinement and where later process cannot undo days or weeks of unlawful detention already suffered. Pet. ¶¶ 100, 119-125.

II. ARGUMENT

A. Petitioner is likely to succeed on the merits because the rearrest and resulting detention are unlawful from their inception.

The motion's principal theory is straightforward. The Court need not begin with the question whether Petitioner should now receive some additional process from an immigration judge. The antecedent question is whether ICE lawfully rearrested and re-confined a person whom the Government had already released on recognizance years earlier, who had complied with all conditions, and whose removal proceedings remained pending. Pet. ¶¶ 24-29, 76-87, 121.

The petition alleges that ICE performed a warrantless rearrest without individualized probable cause or reasonable suspicion, and without lawful grounds to believe Petitioner was likely to escape before a warrant could be obtained. Pet. ¶¶ 77-87. Those allegations state substantial Fourth Amendment and regulatory violations and attack the lawfulness of the seizure itself, not merely the procedures that followed it. Pet. ¶¶ 76-87.

The petition further alleges that the rearrest was carried out in the interior of the United States, during a routine traffic stop in Oklahoma, years after Petitioner's release from initial immigration custody. Pet. ¶¶ 29, 31-35, 45-49. On the petition's facts, ICE then compounded the unlawful seizure by invoking 8 U.S.C. § 1225(b) as though Petitioner were still at the threshold of entry, even though he had long since entered, been

released, been placed into § 1229a proceedings, and was living and working in the community. Pet. ¶¶ 31-35, 40-65, 101-107.

The petition cites substantial recent authority holding that noncitizens who were released into the interior and later rearrested are governed, if at all, by 8 U.S.C. § 1226(a), not § 1225(b). Pet. ¶¶ 51-59, 102-107. The petition further alleges that courts in this District have repeatedly rejected the Government's effort to stretch § 1225(b) to interior rearrests and have recognized that such detention lacks statutory authority. Pet. ¶¶ 56-59, 112, 117, 120.

For purposes of this emergency motion, these points matter in combination. If the rearrest was unlawful under the Fourth Amendment and the arrest regulations, and if the detention framework imposed after that rearrest also lacks statutory authority, then Petitioner's present confinement is unlawful from the beginning. Pet. ¶¶ 76-87, 101-118. Habeas relief exists to end unlawful custody, not to perpetuate it through additional detention while the Government attempts to reconstruct a lawful basis after the fact. Pet. ¶¶ 39, 98-100, 124.

B. Immediate release is the proper interim remedy because the injury is procedural and constitutional unlawful confinement itself and every day that passes without remedy accrues on the irreparable harm from these violations.

Petitioner does not seek an alternative order remanding him to an immigration judge for a bond hearing. The reason is simple: a bond hearing presupposes a detention framework that the petition alleges is unlawful. Pet. ¶¶ 31-37, 64-65, 101-107. If the Court is persuaded that ICE unlawfully seized Petitioner and now holds him without lawful statutory authority, then ordering him to remain detained while he pursues further custody review would extend rather than cure the constitutional and statutory injury.

Every additional day of confinement is irreparable because loss of physical liberty cannot be repaired after the fact. Pet. ¶¶ 8-9, 38-39, 100, 119-125. That harm is intensified here because Petitioner has already been separated from his United States citizen wife and

infant child, interrupted in his lawful work, and deprived of the liberty the Government itself previously recognized when it released him on recognizance. Pet. ¶¶ 24-30, 121.

The petition also alleges that no meaningful administrative remedy is realistically available. Because DHS has invoked § 1225(b), immigration judges are categorically understood to lack bond jurisdiction under current BIA precedent, and thus no neutral forum exists to test the legality of detention in the ordinary administrative process. Pet. ¶¶ 33, 36, 66-75, 122. In those circumstances, habeas relief should terminate unlawful custody rather than defer meaningful relief to a process that is unavailable, inadequate, or incapable of restoring the liberty already being lost each day. Pet. ¶¶ 66-75, 98-100, 124.

Petitioner therefore seeks release now, on the same logic that supports habeas relief itself: if custody is unlawful, it must stop. Pet. ¶¶ 37, 107, 113, 118, 120, 124-125.

C. Anti-transfer relief is necessary to preserve the Court's jurisdiction and prevent repetition of the same harm.

The petition alleges a concrete, non-speculative transfer risk. Petitioner's earlier habeas case in the Western District of Oklahoma remained pending while Respondents transferred him to California, despite a prior order requiring advance notice before any move. Pet. ¶¶ 3-6, 13. The petition further alleges that the parties jointly sought transfer of that case to this District, but because no ruling issued, Petitioner was forced to dismiss and refile here to secure review in the district of present confinement. Pet. ¶¶ 6-12.

That history matters because it shows that transfer is not hypothetical. It has already happened once during active habeas litigation, and another transfer could again complicate or delay adjudication, impair counsel access, and frustrate meaningful relief. Pet. ¶¶ 8-14. An anti-transfer order therefore preserves the status quo, protects the Court's jurisdiction, and prevents Respondents from defeating effective habeas review through unilateral movement of the detainee. Pet. ¶¶ 11-14.

D. The remaining TRO factors strongly favor relief.

The balance of equities tips sharply toward Petitioner. On one side is ongoing physical confinement alleged to be unconstitutional, ultra vires, and unsupported by any

lawful basis for warrantless rearrest. Pet. ¶¶ 29-37, 76-90, 101-118. On the other side, Respondents have no legitimate interest in maintaining detention that exceeds their statutory authority or was initiated in violation of the Constitution and governing regulations. Pet. ¶¶ 61-65, 83-87, 107, 113, 118.

The public interest also favors relief. The public has a strong interest in ensuring that executive detention complies with the Constitution, the INA, and binding federal regulations, and that habeas corpus remains a swift and effective remedy against unlawful restraint. Pet. ¶¶ 38-39, 66-75, 98-100, 114-118. The public has no interest in prolonging confinement that the Government cannot lawfully justify or in allowing transfer practices to obstruct judicial review. Pet. ¶¶ 8-14, 124.

E. Irreparable harm Request for Expedited Proceedings.

Because this case challenges present physical confinement, Petitioner asks the Court to act forthwith under 28 U.S.C. § 2243, issue temporary relief immediately, and require Respondents to answer on an expedited basis. Pet. ¶¶ 38-39. The petition alleges ongoing irreparable harm for every day that unlawful detention continues, which warrants same-day or next-day consideration if practicable. Pet. ¶¶ 8-9, 119-125.

CONCLUSION

For the foregoing reasons, and based on the allegations set forth in the petition, Petitioner respectfully requests that the Court issue an emergency temporary restraining order directing Respondents to release Petitioner forthwith from immigration detention, prohibiting Respondents from transferring him outside the Eastern District of California absent prior order of this Court, and setting an expedited schedule under 28 U.S.C. § 2243 for Respondents to show cause why the writ should not be granted.

Dated: July 12, 2026

Respectfully submitted,

//s// Bernal Peter Ojeda
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