MICHELE BECKWITH
Acting United States Attorney
MICHELLE RODRIGUEZ
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAVIER ISAIS CHAVEZ,

Petitioner,

v.

U.S. ATTORNEY GENERAL BONDI, ET AL,[1]

Respondents.

CASE NO. 1:25-CV-00198-HBK

OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Respondent opposes Petitioner's motion for a temporary restraining order ("TRO"). ECF 2. By his TRO motion, Petitioner does not seek to maintain the status quo against irreparable injury pending a determination on the merits. Instead, he seeks only to obtain, by means of a TRO, the ultimate relief he demands in this case. *See* ECF 1 at 3, 20-21; ECF 2; ECF 2-2 at 2, 12-13. Such use of a TRO motion is improper. This EDCA court-of-custody should follow its own precedent and deny the TRO. *See Keo v. Warden of Mesa Verde Ice Processing Center,* Slip Op., 2024 WL 3970514, (E.D. Cal. August 28, 2024). *See also Doe v. Bostock,* 2024 WL 2861675 (W.D. Wash. June 6, 2024).

[1] Respondent moves to dismiss the underlying petition and TRO motion and, otherwise, to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the respondent to the petition. *Riego v. Current or Acting Field Office Director,* Slip Op., 2024 WL 4384220, (E.D. Cal. Oct. 3, 2024) (ordering § 2241 petitioner, a non-citizen alien, to file a motion to amend his petition to "name a proper respondent" and setting forth that "[f]ailure to amend the petition and state a proper respondent will result in dismissal of the petition for lack of jurisdiction"). *See also* 28 U.S.C. § 2242; *Rumsfeld v. Padilla,* 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F3rd 891, 894 (9th Cir. 1996). *Doe v. Garland,* 109 F.4th 1188, 1197 (9th Cir. 2024).

I. BACKGROUND

In 2016, Petitioner, a non-citizen alien, was *inter alia* convicted of assault with a deadly weapon, in violation of California Penal Code (CPC) § 245(a)(1), and corporal injury to spouse/cohabitant/former cohabitant/child's parent, in violation of CPC § 273.5(a). *See* Barnert Declaration (Decl.) p 3; *see also* Decl. Exh. 3. Accordingly, as a matter of law, Petitioner was thereafter subject to mandatory detention under 8 U.S.C. § 1226(c). Specifically, mandatory detention is compelled because he has suffered conviction of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(F). *Id.*

On 4/27/2023, Petitioner, after completion of his multiple terms of state imprisonment,[2] was detained by DHS and he was placed into removal proceedings. *See* ECF 2-2 at 2. *See also* Barnert Decl. at p 3. Via Immigration Court proceedings, Petitioner, after conceding removability, elected to prolong his detention by making applications for: (1) adjustment of status, in conjunction with a waiver of inadmissibility under 8 U.S.C. 1182(h); (2) asylum; (3) withholding of removal; and (4) protection under the Convention Against Torture. *See* Decl., Exh 7. On 10/21/2024, an Immigration Judge denied Petitioner's applications for relief and protection from removal and ordered him removed from the United States to his country of origin (Mexico). Barnert Decl. p 3; *see also* Decl., Exh.7.

Between 4/27/2023 (onset of civil detention) and 10/21/2023 (resolution of Petitioner's applications for relief and protection from removal), Petitioner, the non-citizen alien, prolonged his own civil detention (about 23-months) via numerous requested and received extensions.

///

[2] In 2018, Petitioner suffered additional felony conviction for assault with force likely to inflict great bodily injury in violation of CPC § 245(a)(4). Barnert Decl., Exh. 3. And, in 2023, Petitioner was convicted of felony possession of illicit drugs in a jail facility in violation of CPC § 4573.8. Barnert Decl., Exh. 5.

DATE	REASON
05/25/2023	Petitioner's demand for additional time to prepare / continuance
06/27/2023	Petitioner's demand for additional time to prepare / continuance
07/27/2023	Petitioner's demand for additional time to prepare/continuance
08/30/2023	Petitioner's continuance granted for Petitioner's change of counsel
10/12/2023	Petitioner's demand for additional time to prepare / continuance
11/16/2023	Petitioner's demand for additional time to prepare / continuance
12/13/2023	Petitioner's demand for additional time to prepare / continuance
03/07/2024	Petitioner's demand for additional time to prepare / continuance
03/14/2024	Petitioner's demand for additional time to prepare / continuance
04/15/2024	Petitioner's demand for additional time to prepare / continuance
06/24/2024	Petitioner's demand for additional time to prepare / continuance

Harrold Decl. p 2-3. Petitioner, after all such strategic delay to compound his claim of so-called prolonged detention, then waited (after the final order of removal was entered) the maximum time to file an appeal of the final order of removal. Specifically, on 11/19/2024 (while due 11/20/2024), Petitioner again elected to prolong his detention by filing for Board of Immigration Appeals (BIA) review of the Immigration Judge's final order of removal. *See* Barnert Decl. p 4; *see also* Decl., Exh. 8. Petitioner's BIA appeal is pending.

At the outset of his civil detention, Petitioner enjoyed detention review by DHS's Enforcement and Removal Operations (ERO). Barnert Decl. p 4. Also, while Petitioner filed for detention (bond) review on 7/15/24, his motion was denied (on 7/18/2024) because he failed to file in his court-of-custody (*i.e.*, Petitioner filed in the CDCA although he was detained in the EDCA's Golden State Annex). Although Petitioner may seek further detention (parole and bond) review, Petitioner has not sought such detention review, appeal, or other exhaustion of this administrative remedy. *See, e.g.,* 8 U.S.C. §§ 1182(d)(5), 1236; INA § 212(d)(5) (providing that DHS may, in its discretion, parole some aliens into the United States for urgent humanitarian reasons or a significant public benefit).

Petitioner is presently held, pending removal proceedings, at the Mesa Verde ICE Processing Center located in Bakersfield, California.

///

II. ARGUMENT

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Plaintiffs' burden is aptly described as "heavy." *Id.* A preliminary injunction requires "substantial proof" and a "'clear showing.'" *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted). "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

As the purpose of preliminary injunctive relief is to preserve the status quo pending final adjudication on the merits, there is "heightened scrutiny" for mandatory preliminary injunctions, which is what Petitioner seeks here.[3] *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). Where "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee of Cent. American Refugees v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1442 (9th Cir. 1986).

Here, Petitioner's TRO motion is improper and should be denied. The purpose of a preliminary injunction is to preserve the status quo between the parties pending a resolution of a case on the merits. *See U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir 2010). To that end, "judgment

[3] "A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014) (internal quotation omitted).

on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). By the instant TRO motion, Petitioner seeks only to alter the status quo by issuing an expedited order that would grant him the ultimate relief he seeks in his petition—while depriving Respondent (and this court-of-custody) an opportunity to address the merits.

Petitioner's TRO motion presents a substantially similar situation to that in *Keo,* Slip Op., 2024 WL 3970514. *Accord Doe*, 2024 WL 2861675. In *Keo*, the non-citizen alien in ICE detention filed both a petition and a TRO motion. *Id.* In *Keo,* this court-of-custody observed that "Petitioner summarily requests that he be released from custody or provided with a bond hearing, which is precisely the same ultimate relief sought in his underlying Petition" and, in denying the TRO this court-of-custody found "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits." *Id.* This court-of-custody further found that the *Keo* TRO demand, as in the instant case, "in the guise of preliminary relief[,] is a highly inappropriate result." *Id.* (citing *Senate of Cal.*, 968 F.2d at 978).

Like *Keo,* the relief Petitioner demands via TRO is not 'temporary' or 'preliminary' but rather is the same ultimate relief he demands in his underlying petition. This court-of-custody should follow well established law that it is inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

Similarly, *Doe,* 2024 WL 2861675, also involved a close set of facts, wherein the petitioner was a non-citizen alien in DHS detention who filed a habeas petition and then sought the same relief in an expedited TRO motion. 2024 WL 2861675, at *2. In *Doe,* the court-of-custody denied the TRO motion and explained that Doe's motion was inappropriate because she had "explicitly request[ed] a departure from the status quo and indeed requests the ultimate relief she seeks in this action." *Id.* The same result

///

is warranted here. As in *Keo* and *Doe*, there is no irreparable harm that will occur in the absence of preliminary relief and altering the status quo. Significantly, in this case neither the balance of equities, nor the public interest, supports a TRO that seeks the same ultimate relief as the underlying petition but deprives Respondent of a full and fair opportunity to answer.

For the foregoing reasons, it is respectfully requested that this court-of-custody dismiss the TRO demand. Petitioner, impermissibly seeking ultimate relief, has flatly failed his TRO burden.

Dated: March 20, 2025

MICHELE BECKWITH
Acting United States Attorney

By: /s/ MICHELLE RODRIGUEZ
MICHELLE RODRIGUEZ
Assistant United States Attorney