

District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEHRAL ALBERT RUIZ MALIWAT,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:25-cv-00788-TMC

FEDERAL RESPONDENTS'¹
OPPOSITION TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

Noted for Consideration:
May 5, 2025

I. INTRODUCTION

Petitioner Nehral Albert Ruiz Maliwat fails to make a clear showing that he is entitled to the extraordinary remedy of a temporary restraining order ("TRO"). U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Maliwat, a Philippines national, pursuant to Section 235(b) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1225(b). Although Maliwat is a lawful permanent resident of the United States, he is undergoing removal proceedings before the immigration court as he has been charged as being inadmissible due to his military conviction of forcible rape. In the TRO motion, Maliwat asserts that his continued

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 detention violates due process and seeks an order compelling his immediate release from
2 immigration detention or an individualized bond hearing. This Court should deny the Motion.

3 Maliwat has not demonstrated that the law and facts clearly favor the grant of
4 emergency mandatory injunctive relief here. It is undisputed that he is detained pursuant to
5 Section 1225(b) until his removal. Fatal to his request for a TRO, Maliwat has not
6 demonstrated an irreparable injury. In fact, if his alleged injury was found to be irreparable,
7 then every habeas claim would satisfy the injury requirement for emergency injunctive relief.
8 Finally, the balance of equities and public interest tilt against granting a TRO.

9 Furthermore, the mandatory injunction sought by Maliwat would inappropriately have
10 this Court, on a time-compressed basis, grant him the ultimate relief that he seeks in his habeas
11 petition without the requisite showing of facts that clearly favor his position. *See Univ. of Texas*
12 *v. Camenisch*, 451 U.S. 390, 395 (1981) (“[I]t is generally inappropriate for a federal court at
13 the preliminary-injunction stage to give a final judgment on the merits”). As the Ninth Circuit
14 has emphasized, mandatory injunctive relief is “particularly disfavored,” and courts should be
15 “extremely cautious” before granting it. *Garcia v. Google Inc.*, 786 F.3d 733, 740 (9th Cir.
16 2015) (en banc); *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994). Such
17 relief is only appropriate when “the law and facts clearly favor the moving party,” not merely
18 when there is a likelihood of success.

19 Accordingly, Federal Respondents respectfully request that the Court deny Maliwat’s
20 TRO Motion. This Opposition is supported by the Declaration of Cristhian De Castro (“De
21 Castro Decl.”).

22 //

23

24 //

II. FACTUAL BACKGROUND

Maliwat is a native and citizen of the Philippines who was admitted to the United States with lawful permanent resident status in 2007. De Castro Decl., ¶¶ 3-4. In 2011, he enlisted in the U.S. Air Force. Pet., ¶ 20. On August 28, 2013, a General Court Martial found Maliwat guilty of Rape Using Force in violation of Article 120(A)(1) of the Uniform Code of Military Justice. De Castro Decl., ¶ 5; Pet., ¶ 21. Maliwat was sentenced to two years of confinement, forfeiture of all pay and allowances, reduction to the grade of E-1, and a dishonorable discharge. De Castro Decl., ¶ 5. Maliwat asserts that he received early release from confinement based on good behavior. Pet., ¶ 23. Maliwat has not provided information on when he separated from the U.S. Air Force and whether his discharge was dishonorable.

On May 21, 2024, Maliwat sought admission into the United States as a returning lawful permanent resident following a vacation to Mexico. De Castro Decl., ¶ 6; Pet., ¶ 26. Due to his military conviction, U.S. Customs and Border Patrol (“CBP”) paroled him into the United States for deferred inspection. De Castro Decl., ¶ 6; Pet., ¶ 26. CBP did not detain Maliwat. Pet., ¶ 26. The next month, Maliwat reported to CBP’s deferred inspections where he was issued a Notice to Appear, charging him as an arriving alien inadmissible under 8 U.S.C. § 1182(a)(2)(A)(i)(I), for a crime involving moral turpitude. De Castro Decl., ¶ 7; Pet., ¶ 27.

On July 15, 2024, ICE arrested Maliwat following his appearance at deferred inspection and transferred him for detention at the Northwest ICE Processing Center (“NWIPC”) pursuant to 8 U.S.C. § 1225(b)(2). De Castro Decl., ¶¶ 7, 11; Pet., ¶ 28. Maliwat is in ongoing removal proceedings before the immigration court. De Castro Decl., ¶¶ 8-12. The Immigration Judge (“IJ”) has sustained the charges of inadmissibility in the Notice to Appear and found that Maliwat’s conviction constitutes a crime involving moral turpitude and a valid conviction for immigration purposes. *Id.*, ¶ 8. Twice, the IJ has denied Maliwat’s bond redetermination

1 requests due to lack of jurisdiction because of Maliwat's arriving alien status under Section
2 1225(b). *Id.*, ¶ 12. In December, Maliwat filed an application for relief from removal. *Id.*,
3 ¶ 10. His next appearance before the IJ is scheduled for June 3, 2025. *Id.*, ¶ 9. Maliwat's
4 counsel has filed a motion for a continuance of this hearing.

5 **III. LEGAL STANDARD**

6 The standard for issuing a temporary restraining order is "substantially identical" to the
7 standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
8 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is
9 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a*
10 *clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972
11 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council,*
12 *Inc.*, 555 U.S. 7, 22 (2008). For mandatory preliminary relief to be granted, Maliwat "must
13 establish that the law and facts *clearly favor* [his] position." *Garcia*, 786 F.3d at 740 (emphasis
14 in original).

15 And, "[w]here a party seeks mandatory preliminary relief that goes well beyond
16 maintaining the status quo pendente lite, courts should be extremely cautious about issuing a
17 preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th
18 Cir. 1984).

19 "A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed
20 on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3)
21 the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Id.*
22 (internal quotation omitted). Alternatively, a plaintiff can show that there are "serious questions
23 going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the
24

second and third *Winter* factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

The purpose of preliminary injunctive relief 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.* (internal quotation omitted). “In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases.” *Id.* (internal quotation omitted). Where a plaintiff seeks mandatory injunctive relief, “courts should be extremely cautious.” *Stanley*, 13 F.3d at 1319 (internal quotation omitted). Thus, in a mandatory injunction request, the moving party “must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed.” *Garcia*, 786 F.3d at 740 (emphasis in original).

Here, rather than preserving the status quo, Maliwat seeks mandatory injunctive relief in the form of an order requiring his immediate release or, in the alternative, an individualized bond hearing.

//

//

//

//

1
2
3
4 **IV. ARGUMENT**

5 **MALIWAT DOES NOT SATISFY THE REQUIREMENTS**
6 **FOR PRELIMINARY RELIEF.**

7
8 **A. Maliwat is unlikely to succeed on the merits.**

9 Likelihood of success on the merits is a threshold issue: “[W]hen a plaintiff has failed to
10 show the likelihood of success on the merits, [the court] need not consider the remaining three
11 *Winters* elements.” *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a
12 habeas petition, Maliwat must show that he is “in custody in violation of the Constitution or
13 laws or treaties of the United States.” *See* 28 U.S.C. § 2241. Maliwat’s constitutional claim is
14 that his continued detention without a court-ordered bond hearing violates due process. TRO
15 Mot., at 4. This claim lacks merit.

16 There is no dispute that Maliwat’s detention during his removal proceedings is
17 statutorily mandated under 8 U.S.C. § 1225(b)(2). Pet., ¶ 36. Although he is a lawful
18 permanent resident, Maliwat became an arriving alien when he sought admission to the United
19 States last year because of his military rape conviction. 8 U.S.C. § 1182(a)(2)(A)(i); 8 U.S.C.
20 § 1101(a)(13)(C)(v). While his removal proceedings are ongoing, Maliwat’s detention is
21 statutorily mandated. 8 U.S.C. § 1225(b)(2)(A).

22 Section 1225(b) does not entitle Maliwat to a bond hearing. The Supreme Court has
23 considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and
24 whether such noncitizens detained under this statutory authority have a statutory right to a bond
hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 297-303 (2018). The Court rejected both
arguments, holding that Section 1225(b) mandates detention during the pendency of removal
proceedings and provides no entitlement to a bond hearing. *See id.*, at 303 (“Nothing in the
statutory text imposes any limit on the length of detention.”). The Court further clarified that

1 Section 1225(b) detainees may be released only through discretionary parole under 8 U.S.C. §
2 1182(d)(5). *Id.*, at 300.

3 Maliwat is not entitled to the relief he seeks here. First, this Court should deny
4 Maliwat's request for immediate release from immigration detention. TRO Mot., at 4. A
5 noncitizen is entitled to release if he can show that his immigration detention is indefinite as
6 defined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021
7 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL
8 1078627 (W.D. Wash. Apr. 11, 2022). While Maliwat's detention has lasted approximately
9 nine months, and his removal proceedings are ongoing, he has not alleged that his detention has
10 become indefinite. Nor has Maliwat provided any legal basis for his immediate release from
11 detention. While *Jennings* forecloses any statutory or categorical constitutional right to a bond
12 hearing under Section 1225(b), it did not reach whether prolonged detention without such a
13 hearing could, in individual cases, raise a due process concern.

14 Second, his request for a court-ordered bond hearing should be denied. His continued
15 detention without a court-ordered bond hearing does not violate his Fifth Amendment due
16 process rights. Courts in this District analyze this issue using a multi-factor test as set forth in
17 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019). In *Banda*, the district
18 court found that the petitioner's 17-month immigration detention pursuant to 8 U.S.C. § 1225(b)
19 had become unreasonable. *Id.*, at 1117-121. To conduct this analysis, the court analyzed six
20 factors: (1) length of detention; (2) how long detention is likely to continue absent judicial
21 intervention; (3) conditions of detention; (4) the nature and extent of any delays in the removal
22 caused by the petitioner; (5) the nature and extent of any delays caused by the government; and
23 (6) the likelihood that the final proceedings will culminate in a final order of removal. *See id.*

1 An analysis of these factors demonstrates that Maliwat's detention, while prolonged, has not
2 become unreasonable.

3 The first factor assesses the length of the petitioner's detention. Maliwat has been
4 detained for approximately nine months and his removal proceedings are ongoing. While
5 Federal Respondents acknowledge that Maliwat's detention has become prolonged, this Court
6 should note that the current length of his detention has not reached the length of what many
7 courts have found to be unreasonable. *See Hong*, 2022 WL 1078627, at *5 (collecting cases
8 finding prolonged detention from 13 months to 32 months without a court-ordered bond hearing
9 to have become unreasonable). Therefore, if this Court finds that this factor favors Maliwat,
10 this factor should only weigh slightly in his favor.

11 Second, the length of Maliwat's future detention currently should favor Federal
12 Respondents. He asserts that the IJ's ruling on the classification of his conviction as a crime of
13 moral turpitude has been preserved for appeal. Pet., at 17-18. But no appeal has been filed and
14 an appeal may not be necessary if he is granted relief from removal. But for the fact that his
15 counsel is seeking a continuance of the next hearing date, if he were successful with his
16 application for relief from removal, his detention could end at that time. Therefore, this Court
17 should not accept Maliwat's argument concerning potential Ninth Circuit appeals. Furthermore,
18 the impact of his wife's recent filing of a Form I-130 on the length of his detention is also
19 speculative. This is before another agency and has not been adjudicated. Pet., ¶ 46.

20 Third, Maliwat is detained at the NWIPC. He asserts that "the conditions of his criminal
21 detention were substantially better [than the conditions at NWIPC]." Pet., ¶ 49. Federal
22 Respondents lack any information about Maliwat's conditions of confinement at the Navy Brig
23 in Charleston, North Carolina. This factor should also be neutral for the purposes of the TRO
24 Motion.

1 The fourth *Banda* factor assesses delays caused by the petitioner. This factor should
2 favor Federal Respondents. As the *Banda* Court noted, “Courts should be sensitive to the
3 possibility that dilatory tactics by the removable [noncitizen] may serve not only to put off the
4 final day of deportation, but also to compel a determination that the [noncitizen] must be
5 released because of the length of his incarceration.” *Banda*, 385 F. Supp. 3d at 1119. Here,
6 Maliwat concedes that he will be seeking a continuance request concerning his next scheduled
7 hearing before the IJ. Pet., ¶ 35.

8 The fifth *Banda* factor should favor Federal Respondents. The government has not
9 delayed Maliwat’s removal proceedings. Maliwat attempts to frame the issue of the purported
10 delay by focusing on the timing of the government’s *initiation* of his removal proceedings. Pet.,
11 ¶¶ 53-54. He makes no assertion that the government has delayed the pending removal
12 proceedings. Nor does he provide any legal requirement that the government had a duty to
13 exercise its discretion to bring removal proceedings prior to when he sought admission to the
14 United States as a reentering lawful permanent resident in 2024. Therefore, this factor weighs
15 strongly in favor of Federal Respondents.

16 The last *Banda* factor weighs the likelihood that removal proceedings will result in a
17 final order of removal. Maliwat has been found guilty of forcible rape by a military court
18 martial. This is an extremely serious offense. As a result, he has been deemed inadmissible.
19 Maliwat has a pending application for relief from removal and asserts that he will be
20 challenging his removal under an additional basis. Pet., ¶ 56. But the IJ has not yet ruled on his
21 application from relief, and he has not even presented the additional challenge to removal he
22 now claims. While the government has a very strong case to obtain a final order of removal,
23 this Court should find this factor to be speculative.

Overall, the *Banda* factors do not demonstrate that Maliwat's continued detention without a bond hearing has become unreasonable. Furthermore, there is no legal basis for this Court to order his immediate release from detention even if it were to disagree with Federal Respondents' assessment, which it should not. Accordingly, Maliwat is not likely to succeed on the merits of his claims.²

B. Maliwat has not shown irreparable harm.

Maliwat has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. "The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [TRO]." *Juarez v. Asher*, 556 F. Supp.3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)). To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

² If this Court does find that Maliwat is entitled to a court-ordered bond hearing, the bond hearing should be conducted by an IJ. The Petition asserts that "this Court is authorized to hold a bond hearing." Pet., at 23. Even with such authority, this Court should decline to conduct the bond hearing as "courts in this Circuit have regularly found that the IJ is the proper authority to conduct bond hearings and determine a detainee's risk of flight or dangerousness to the community." *Doe v. Becerra*, 697 F. Supp. 3d 937, 948 (N.D. Cal. 2023), *appeal dismissed*, No. 24-332, 2025 WL 252476 (9th Cir. Jan. 15, 2025)

Maliwat asserts that his detention constitutes irreparable injury. *See* Mot., ¶ 11. But this irreparable harm argument “begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury.” *Cortez v. Nielsen*, 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Maliwat’s “loss of liberty” is “common to all [noncitizens] seeking review of their custody or bond determinations.” *See Resendiz v. Holder*, 12-cv-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). “[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm[.]” *Taha v. Bostock*, No. 25-cv-649, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011)).

Maliwat also alleges that he will suffer the following irreparable harm without a bond hearing: “the inability to be with his family, provide economic and emotional support to them, and to bond with his children.” TRO Mot., ¶ 12. Yet it is speculative to assert that a bond hearing will prevent these purported harms as an IJ may find that Maliwat should remain in detention.

Accordingly, Maliwat has not made a clear showing that he will be subject to immediate irreparable injury without the requested mandatory injunctive relief.

C. The balance of the interests and public interests favor the Government.

It is well settled that the public interest in enforcement of United States’ immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of removal orders). This is especially true of

1 noncitizens that have committed heinous offenses. This public interest outweighs Maliwat's
2 private interest here. Maliwat asks the Court to declare his detention unconstitutional, despite
3 the Government's valid reasons and statutory bases for detaining him.

4 Accordingly, this Court should deny his Motion.

5 **V. CONCLUSION**

6 For the foregoing reasons, Maliwat has not satisfied his high burden of establishing
7 entitlement to mandatory injunctive relief, and his Motion should be denied.

8 DATED this 2nd day of May, 2025.

9 Respectfully submitted,

10 TEAL LUTHY MILLER
Acting United States Attorney

11 s/ Michelle R. Lambert

12 MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
1201 Pacific Avenue, Suite 700
Tacoma, Washington 98402
Phone: (253) 428-3800
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

16 *I certify that this memorandum contains 3,301*
17 *words, in compliance with the Local Civil Rules.*

18 *Attorneys for Federal Respondents*