

1 BILAL A. ESSAYLI
United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
JOANNE S. OSINOFF
4 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
5 YUJIN CHUN (Cal. Bar No. 306298)
Assistant United States Attorney
6 Federal Building, Suite 7516
300 North Los Angeles Street
7 Los Angeles, California 90012
Telephone: (213) 894-0929
8 Facsimile: (213) 894-7819
E-mail: Yujin.Chun@usdoj.gov
9

Attorneys for Federal Defendants-Respondents
10 Timothy Robbins, Todd M. Lyons, Kristi Noem, and Pam Bondi

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 JOAQUIN E. VILLALTA SALAZAR,

16 Petitioner-Plaintiff,

17 v.

18 Timothy ROBBINS, Acting Field
Office Director of Los Angeles Office
19 of Detention and Removal, U.S.
Immigrations and Customs
20 Enforcement; U.S. Department of
Homeland Security;

21 Todd M. LYONS, Acting Director,
22 Immigration and Customs Enforcement,
U.S. Department of Homeland Security;

23 Kristi NOEM, in her Official Capacity,
24 Secretary, U.S. Department of
Homeland Security; and

25 Pam BONDI, in her Official Capacity,
26 Attorney General of the United States;

27 Respondents-Defendants.
28

No. 2:25-cv-05473-VBF-MAR

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

*[Filed concurrently with Declaration of
Johana L. Jimenez]*

Honorable Margo A. Rocconi
United States Magistrate Judge

TABLE OF CONTENTS

	Page(s)
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
III. STANDARD OF REVIEW	5
IV. ARGUMENT	6
A. Petitioner is Not Likely to Succeed on the Merits of His Claim.	6
B. Petitioner Fails to Carry His High Burden to Prove That He is Likely to Suffer Irreparable Harm Unless the Court Issues the Requested TRO	9
C. The Balance of Equities Weigh in Favor of Denying Petitioner's TRO Application.	10
V. CONCLUSION.....	11

TABLE OF AUTHORITIES

Federal Cases	Page(s)
<i>Am. Passage Media Corp. v. Cass Commc'ns, Inc.</i> , <u>750 F.2d 1470</u> (9th Cir. 1985)	9
<i>Black v. Decker</i> , <u>103 F.4th 133</u> (2d Cir. 2024)	7
<i>Blackie's House of Beef, Inc. v. Castillo</i> , <u>659 F.2d 1211</u> (D.C. Cir. 1981)	10
<i>Caribbean Marine Servs. Co. v. Baldrige</i> , <u>844 F.2d 668</u> (9th Cir. 1988)	9
<i>Casas-Castrillon v. Dep't of Homeland Sec.</i> , <u>535 F.3d 942</u> (9th Cir. 2008)	3, 4
<i>Doe v. Snyder</i> , <u>28 F.4th 103</u> (9th Cir. 2022)	5
<i>Fraihat v. ICE</i> , <u>445 F.Supp.3d 709</u> (C.D. Cal. April 20, 2020)	1, 4, 7
<i>Fraihat v. ICE</i> , <u>16 F.4th 613</u> (9th Cir. 2021)	7
<i>Garcia v. Google, Inc.</i> <u>786 F.3d 733</u> (9th Cir. 2015)	5, 6
<i>Herb Reed Enters., LLC v. Florida Entm't Mgmt., Inc.</i> , <u>736 F.3d 1239</u> (9th Cir. 2013)	9
<i>Hurtado-Romero v. Sessions</i> , <u>2018 WL 2234500</u> (N.D. Cal. May 16, 2018)	9
<i>Macias v. Garland</i> , <u>2025 WL 908037</u> (C.D. Cal. Jan. 22, 2025)	9
<i>Munaf v. Geren</i> , <u>553 U.S. 674</u> (2008)	5
<i>New Motor Vehicle Bd. v. Orrin W. Fox Co.</i> , <u>434 U.S. 1345</u> (1977)	11
<i>Nken v. Holder</i> , <u>556 U.S. 418</u> (2009)	5
<i>Prieto-Romero v. Clark</i> , <u>534 F.3d 1053</u> (9th Cir. 2008)	9
<i>Quebec v. Harris</i> , <u>729 F.3d 937</u> (9th Cir. 2013)	6

1	<i>Resendiz v. Holder</i> ,	
2	<u>2012 WL 5451162</u> (N.D. Cal. Nov. 7, 2012)	10
3	<i>Rodriguez v. Hayes</i> ,	
4	<u>578 F.3d 1032</u> (9th Cir. 2009)	8
5	<i>Rodriguez v. Holder, No. CV 07-3239 TJH</i>	
6	(RNBx), <u>2013 WL 5229795</u> (C.D. Cal. Aug. 6, 2013)	3
7	<i>Ross v. Blewett, No. 2:20-CV-01338-SB</i> ,	
8	<u>2025 WL 375072</u> (D. Or. Feb. 3, 2025)	8
9	<i>Senate of California v. Mosbacher</i> ,	
10	<u>968 F.2d 974</u> (9th Cir. 1992)	5
11	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> ,	
12	<u>240 F.3d 832</u> (9th Cir. 2001)	5
13	<i>Matter of Sugay</i> ,	
14	<u>17 I. & N. Dec. 637</u> (BIA 1981)	7
15	<i>United States v. Martinez-Fuerte</i> ,	
16	<u>428 U.S. 543</u> (1976)	10
17	<i>Virginian R. Co. v. United States</i> ,	
18	<u>272 U.S. 658</u> (1926)	5
19	<i>Weinberger v Romero-Barcelo</i> ,	
20	<u>456 U.S. 305</u> (1982)	10
21	<i>Winter v. Natural Resources Defense Council, Inc.</i> ,	
22	<u>555 U.S. 7</u> (2008)	5, 9
23	Federal Statutes	
24	<u>8 U.S.C. § 1226(a)</u>	8
25	<u>8 U.S.C. § 1226(b)</u>	6
26	<u>8 U.S.C. § 1226(c)</u>	7
27	State Statutes	
28	<u>Cal. Health and Safety Code § 11377</u>	2, 3
	<u>Cal. Penal Code § 273.5</u>	2, 4, 7
	<u>Cal. Penal Code § 273.5</u>	2
	Federal Regulations	
	<u>8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9)</u>	6
	Federal Rules	
	<u>Fed. R. Civ. P. 65(c)</u>	11

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Joaquin E. Villalta Salazar has filed a request for a temporary restraining order (1) barring his removal from the United States; and (2) releasing him from detention. As a preliminary matter, the BIA's order staying Petitioner's removal has been issued and remains in place—as he concedes. There is thus no threatened removal to enjoin, nor is there a legal basis to “double up” and issue the same preliminary injunctive relief as a duplicative TRO of this Court. Furthermore, there is neither a basis nor jurisdiction to issue an order speculatively blocking his future removal, thereby sidelining the BIA and the Ninth Circuit, which have jurisdiction over such matters.

Turning to Petitioner's defective contention that his recent re-detention is unlawful because he was released few years ago and there has not been a showing of a material “change in circumstance” for a change to a previous bond determination, there *was* no such previous bond determination that had ordered his release. To the contrary, his bond was affirmatively denied, and the denial affirmed several times, due to Plaintiff's egregious and recent criminal history of being repeatedly convicted for domestic violence and possession of controlled substances.

In reality, Petitioner was actually released by ICE's decision that he was at excessive risk of COVID-19 at that time relative to his current detention conditions in the early pandemic, consistent with an injunction issued in *Frailhat v. ICE*, 445 F.Supp.3d 709 (C.D. Cal. April 20, 2020) vacated 2022 WL 20212706 (C.D. Cal. Sept. 16, 2022). *Frailhart* had specified how ICE should consider deciding whether to release detainees due to the then-prevalent detention conditions in the early COVID-19 pandemic. While establishing a change of circumstances relative to release on bond is thus not required for Petitioner's re-detention, there are several applicable major changes of circumstance that justify Petitioner's re-detention in any scenario.

First, the COVID-19 pandemic ended. On March 17, 2025, the *Frailhat* case was

1 thus dismissed by stipulation [Dkt. no. 431], as the parties recognized that it had become
2 obsolete, since COVID-19 risk was now manageable. Thus the basis for ICE's prior
3 decision to release Petitioner—that, consistent with *Frailhat*, his detention at that time
4 posed an excessive risk of injury from COVID-19 relative to his being in the general
5 public—is no longer applicable.

6 **Second**, after his release, Petitioner was yet again arrested recently on September
7 13, 2024 for infliction of corporal injury against a spouse, cohabitant, or dating partner
8 under Cal. Penal Code § 273.5—the same violation for which he was convicted in
9 2018—which is what led to his being taken into custody on June 14th.

10 Petitioner's position that he may continue engaging in such serious criminal
11 activity while also being immune from any immigration detention is incorrect.

12 Finally, a temporary restraining order is also unnecessary because under
13 § 1226(a), Petitioner can request a bond hearing. Procedures already exist that are
14 adequate for that purpose, and it is inappropriate and unwarranted to set them aside and
15 negate them with TRO applications in District Court.

16 **II. STATEMENT OF FACTS**

17 Petitioner is a citizen and native of the Republic of El Salvador who entered the
18 United States at an unknown location without being admitted or paroled by an immigration
19 officer. *See Declaration of Johana L. Jimenez* ("Jimenez Decl.") at ¶¶ 3-4. Per the petition,
20 Petitioner is a former gang member and has a criminal history in El Salvador. Petition at
21 20.

22 On August 15, 2017, Petitioner was convicted of possession of a controlled
23 substance in violation of Cal. Health and Safety Code § 11377. Jimenez Decl. at ¶ 5. On
24 October 15, 2018, Petitioner was convicted of infliction of corporal injury against a
25 spouse, cohabitant, or dating partner under Cal. Penal Code § 273.5. *Id.* at ¶ 6. On April
26 30, 2019, Petitioner was again convicted of possession of a controlled substance in
27 violation of Cal. Health and Safety Code § 11377. *Id.* at ¶ 7. On September 18, 2020, the
28 Office of Enforcement and Removal Operations (ERO) Los Angeles arrested Petitioner

1 pursuant to a targeted enforcement operation triggered by his criminal record. *Id.* at ¶ 8.
2 Petitioner was placed in detention at the Adelanto ICE Processing Center. *Id.* On the same
3 date, ERO Los Angeles served Petitioner with a Notice to Appear, Form I-862, pursuant
4 to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), as an alien
5 present in the United States without being admitted or paroled, or who arrived in the
6 United States at any time or place other than as designated by the Attorney General. *Id.*
7 at ¶ 9.

8 On November 13, 2020, the Immigration Judge denied Petitioner's motion for a
9 custody redetermination hearing. *Id.* at ¶ 11. Under INA § 236(c), Petitioner is subject to
10 mandatory detention for possession of a controlled substance under Cal. Health and Safety
11 Code § 11377. *Id.* On February 16, 2021, the Immigration Judge denied Petitioner asylum,
12 withholding of removal, and withholding of removal under the Convention Against
13 Torture, ordering him removed to El Salvador. *Id.* at ¶ 12. On March 17, 2021, Petitioner
14 appealed the Immigration Judge's decision to the Board of Immigration Appeals (Board).
15 *Id.* at ¶ 13. He also filed a motion for custody redetermination the next day. *Id.* at ¶ 14.

16 On March 29, 2021, the Immigration Judge denied Petitioner's motion for a
17 redetermination of his custody status under *Rodriguez v. Holder*, No. CV 07-3239 TJH
18 (RNBx), 2013 WL 5229795 (C.D. Cal. Aug. 6, 2013), *aff'd in part, rev'd in part sub nom.*
19 *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015) *rev'd sub nom. Jennings v.*
20 *Rodriguez*, 138 S. Ct. 830 (2018). *Id.* at ¶ 15. The Immigration Judge found DHS met its
21 burden by clear and convincing evidence that Petitioner did not warrant release from
22 custody on bond because he posed a danger to the community. *Id.* On October 12, 2021,
23 the Board dismissed Petitioner's appeal of the decision by the Immigration Judge. *Id.* at ¶
24 16.

25 On October 21, 2021, Petitioner filed a Petition for review and motion to stay
26 removal with the United States Court of Appeals for the Ninth Circuit. *Id.* at ¶ 17. On or
27 about November 5, 2021, Petitioner filed a motion for custody redetermination hearing
28 which the IJ denied on November 10, 2021 under *Casas-Castrillon v. Dep't of Homeland*

1 *Sec.* 535 F.3d 942 (9th Cir. 2008), finding DHS had previously demonstrated Petitioner is
2 a danger to the community. *Id.* at ¶¶ 18-19. On December 23, 2021, Petitioner appealed,
3 and on or around February 1, 2022, he filed another motion for custody determination
4 hearing. *Id.* at ¶¶ 20-21.

5 On February 3, 2022, ERO released Petitioner from custody due to COVID-19 risk
6 pursuant to its determination consistent with the terms of the preliminary injunction issued
7 in *Fraihat v. ICE*, 445 F.Supp.3d 709 (C.D. Cal. April 20, 2020) vacated 2022 WL
8 20212706 (C.D. Cal. Sept. 16, 2022). *Id.* at ¶ 22. Petitioner was placed under Order of
9 Supervision with GPS monitoring under ERO's Alternatives to Detention Program. *Id.*

10 On April 4, 2022, the Board dismissed Petitioner's appeal challenging the
11 Immigration Judge's decision to deny redetermination of custody status. *Id.* at ¶ 23. On
12 May 15, 2024, the Ninth Circuit denied the Petition for Review. *Id.* at ¶ 24. On July 8,
13 2024, the Ninth Circuit issued the mandate. *Id.* at ¶ 25. On July 26, 2024, Petitioner filed
14 motion to reopen and motion to stay removal with the Board. *Id.* at ¶ 26.

15 On September 13, 2024, Petitioner was arrested again for infliction of corporal
16 injury against a spouse, cohabitant, or dating partner under Cal. Penal Code § 273.5. *Id.* at
17 ¶ 27.

18 On February 3, 2025, the Board granted Petitioner's motion to stay removal. *Id.* at
19 ¶ 28. The motion to reopen remains pending with the Board. *Id.*

20 On June 14, 2025, ERO took Petitioner into custody based on his recent arrest for
21 Cal. Penal Code § 273.5. *Id.* at ¶ 28. On June 16, 2025, ERO transported Petitioner to El
22 Paso, Texas for processing and housing due to the protests and civil unrest in downtown
23 Los Angeles, California. *Id.* at ¶ 29.

24 On June 16, 2025, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition")
25 and on June 17, 2025, an *ex parte* Application for Temporary Restraining Order seeking
26 immediate release from ICE custody and enjoining Respondents from removing him from
27 the United States. Dkt. 1, 2.

1 **III. STANDARD OF REVIEW**

2 The standard for issuing a TRO is substantially identical to the standard for issuing
3 a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d
4 832, 839 n.7 (9th Cir. 2001). A “preliminary injunction is an extraordinary and drastic
5 remedy.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a
6 preliminary injunction only “upon a clear showing that the [movant] is entitled to such
7 relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To
8 obtain a preliminary injunction, the moving party must demonstrate that (1) it is likely to
9 succeed on the merits of its claims; (2) it is likely to suffer an irreparable injury in the
10 absence of injunctive relief; (3) the balance of equities tips in its favor; and (4) the
11 proposed injunction is in the public interest. *Id.* at 20. These factors are mandatory. As the
12 Supreme Court has articulated, “[a] stay is not a matter of right, even if irreparable injury
13 might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian R.*
14 *Co. v. United States*, 272 U.S. 658, 672 (1926)). Instead, it is an exercise of judicial
15 discretion that depends upon the circumstances of the particular case. *Id.*

16 Because Petitioner seeks mandatory injunctive relief here via TRO provisions
17 ordering his release and providing certain procedures for any future re-detention (as
18 opposed to just prohibitory relief) the already high standard is “doubly demanding.”
19 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Thus, Petitioner must establish
20 that the law and facts *clearly favor* his position, not simply that he is likely to succeed. *Id.*
21 Further, a mandatory preliminary injunction will not issue unless extreme or very serious
22 damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

23 Finally, where a litigant seeks their ultimate relief by preliminary injunctive relief
24 that is improper since “judgment on the merits in the guise of preliminary relief is a highly
25 inappropriate result.” *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir.
26 1992).

1 **IV. ARGUMENT**

2 **A. Petitioner is Not Likely to Succeed on the Merits of His Claim.**

3 Likelihood of success on the merits is a threshold issue: “[W]hen ‘a plaintiff has
4 failed to show the likelihood of success on the merits, [the court] need not consider the
5 remaining three [elements].’” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)
6 (*en banc*) (quoting *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729
7 F.3d 937, 944 (9th Cir. 2013)).

8 As a threshold matter, the BIA has already issued an order staying Petitioner’s
9 removal, and there is no active removal order overriding that stay, so the claim for
10 preliminary injunctive relief barring removal is moot and unnecessary. The Petitioner’s
11 removal is already stayed by legal order; while his motion to re-open will almost certainly
12 fail (since he already lost the issue repeatedly), he has already been provided the relief (a
13 stay of removal) that is applicable in this specific context pursuant to the proper procedure.
14 Stacking reiterative District Court injunctions on top of the BIA’s existing stay of removal
15 is not proper, nor does it do anything to meet Petitioner’s very high burden to prove that
16 he will likely suffer irreparable harm *unless* the Court issues the requested preliminary
17 relief.

18 With respect to Petitioner’s request for release from his detention, his detention is
19 authorized. 8 U.S.C. § 1226(b) provides that the government “at any time may revoke a
20 bond or parole authorized under subsection (a), rearrest the alien under the original
21 warrant, and detain the alien.” 8 U.S.C. § 1226(b); 8 C.F.R. §§
22 236.1(c)(9), 1236.1(c)(9) (“When an alien who, having been arrested and taken into
23 custody, has been released, such release may be revoked at any time in the discretion of
24 the district director [and certain other federal officers] in which event the alien may be
25 taken into physical custody and detained. If detained, unless a breach has occurred, any
26 outstanding bond shall be revoked and canceled.”).

27 Petitioner argues that in *his* case re-detention is improper because the Bureau of
28 Immigration Appeals has held that “where a previous bond determination has been made

1 by an immigration judge, no change should be made by [the government] absent a change
2 of circumstance.” *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

3 Here, however, there was no such previous bond determination to release Petitioner.
4 As the Petition instead acknowledges, “ICE released him from custody pursuant to the
5 *Friahat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. Apr. 20, 2020) after determining that he
6 had health conditions...that places him at heightened risk of severe illness and death if he
7 contracts the COVID-19 virus.” Petition at 5. The Petition admits that Petitioner’s request
8 for bond had actually been *denied* previously, which is not surprising given his atrocious
9 and continuous criminal record. *Id.* In fact, Petitioner’s several motions for custody
10 redetermination and appeals thereof were all denied based on Petitioner’s prior criminal
11 convictions. The *Fraihat* order was not a bond determination. Rather ICE decided to
12 release him from custody, consistent with the terms of its preliminary injunction, after
13 assessing the degree to which detention exposed him to excessive COVID-19 risk at that
14 time.

15 Further, the Ninth Circuit reversed the *Fraihat* order in October 2021. *See Fraihat*,
16 16 F.4th 613, 647 (9th Cir. 2021). ICE is no longer subject to that injunction, and the INA
17 directs the detention of those who were formerly released pursuant to an elapsed
18 injunction. In *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024), the 2nd Circuit
19 considered G.M., an immigrant who had similarly been released due to the COVID-19
20 pandemic without ever receiving a bond hearing. The Court noted that ICE is “no longer
21 barred by that injunction from detaining G.M., and section 1226(c), as we have noted,
22 directs the detention of noncitizens in G.M.’s position.” *Id.*

23 Further, although not required here for the detention of Petitioner, the
24 circumstances have, indeed, changed in multiple significant respects from his prior
25 release. As noted previously, on September 13, 2024, Petitioner was arrested for
26 infliction of corporal injury against a spouse, cohabitant, or dating partner under Cal.
27 Penal Code § 273.5 on. ERO took Petitioner into custody based on this recent arrest.
28 Petitioner’s position that he may continue to engage in such reprehensible behavior and

1 yet is entitled to evade re-detention is wrong.

2 Also as discussed previously, the *Fraihat* order was reversed, and the entire case
3 was recently dismissed on March 17, 2025, since the detention health risk that the early
4 pandemic had posed was no longer extant. The COVID-19 pandemic is no longer
5 applicable for release from custody. *See, e.g., Ross v. Blewett*, No. 2:20-CV-01338-SB,
6 2025 WL 375072, at *3 (D. Or. Feb. 3, 2025) (“Since that time, however, circumstances
7 have changed. The percentage of the population that is vaccinated has increased,
8 personal protective equipment (“PPE”) and testing have become widely available, and
9 the number of reported cases, hospitalizations, and deaths related to COVID-19 have
10 decreased significantly.”). Thus the reason for ICE’s prior decision to release Petitioner
11 pursuant to *Fraihat* is facially inapplicable at this juncture.

12 Furthermore, while regulations apply to the agency’s revocation of some other
13 types of supervised release, even in that context the regulatory procedure still does not
14 provide a legal basis for ordering release on the theory that the revocation decision was
15 substantively unmerited. “While the regulation provides the detainee some opportunity
16 to respond to the reasons for revocation, it provides no other procedural and no
17 meaningful substantive limit on this exercise of discretion as it allows revocation “when,
18 in the opinion of the revoking official ... [t]he purposes of release have been served ...
19 [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no
20 longer be appropriate.” *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009),
21 *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§
22 241.4(l)(2)(i), (iv) (emphasis in original).

23 Accordingly, Petitioner could not be ordered released on this theory anyways,
24 even if it applied to his release, and even if there were not significantly changed
25 circumstances since that release—which there are.

26 Petitioner, moreover, can request a bond hearing before an IJ to determine his
27 continued detention at any time. *See* 8 U.S.C. § 1226(a).

28 Finally, to the extent Petitioner may suggest he is being subjected to indefinite or

1 prolonged detention because he is detained while he challenges his removal order before
2 the BIA and Ninth Circuit, that is not a tenable argument. *See Prieto-Romero v. Clark*,
3 534 F.3d 1053 (9th Cir. 2008) (holding petitioner held in ICE custody during judicial
4 review of final removal order was not eligible for relief under *Zadvydas* because his
5 detention was not indefinite as he offered no evidence he would not be deported if Ninth
6 Circuit upheld his order of removal); *see also Macias v. Garland*, 2025 WL 908037, at
7 *3 (C.D. Cal. Jan. 22, 2025) (dismissing *Zadvydas* claim because “Petitioner is on appeal
8 to the BIA . . . [and] there is currently no reason to believe his detention is or would be
9 indefinite”); *Hurtado-Romero v. Sessions*, 2018 WL 2234500, at *4 (N.D. Cal. May 16,
10 2018) (rejecting *Zadvydas* claim because “the sole obstacle to removal appears to be the
11 pending appeal of the adverse withholding decision”).

12 Respondents respectfully submit that Petitioner’s *ex parte* application entirely fails
13 to show a likelihood of success on the merits of his claim.

14 **B. Petitioner Fails to Carry His High Burden to Prove That He is Likely to**
15 **Suffer Irreparable Harm Unless the Court Issues the Requested TRO.**

16 The Supreme Court’s “frequently reiterated standard requires plaintiffs seeking
17 preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an
18 injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). “Issuing a preliminary
19 injunction based only on a possibility of irreparable harm is inconsistent with our
20 characterization of injunctive relief as an extraordinary remedy that may only be awarded
21 upon a clear showing that the plaintiff is entitled to such relief.” *Id.* Conclusory or
22 speculative allegations are not enough to establish a likelihood of irreparable harm. *Herb*
23 *Reed Enters., LLC v. Florida Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013);
24 *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (“Speculative
25 injury does not constitute irreparable injury sufficient to warrant granting a preliminary
26 injunction.”); *Am. Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473
27 (9th Cir. 1985) (finding irreparable harm not established by statements that “are
28 conclusory and without sufficient support in facts”).

1 Here, Petitioner's *ex parte* application fails to meet his burden to establish that he
2 is likely to suffer irreparable injury absent the requested TRO. As Petitioner concedes, the
3 BIA has already issued a stay of his removal. His *ex parte* application fails to establish
4 how issuing a TRO would likely prevent a wrongful removal—as if the government would
5 ignore the BIA stay, but by contrast would not remove him if there was a TRO. Treating
6 the stays issued by other courts and legal bodies as presumptively inadequate is not a basis
7 for a TRO.

8 Further, with respect to Petitioner's contention that he is being subjected to
9 irreparable harm by his detention, he is already detained. That is the status quo, and a TRO
10 ordering his release would *disrupt* that status quo, not maintain it until a future decision.
11 Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their
12 custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D.
13 Cal. Nov. 7, 2012). And in detention, he can request a bond hearing before an IJ. Having
14 to proceed under that process, while he is already detained, is not an irreparable injury.

15 **C. The Balance of Equities Weigh in Favor of Denying Petitioner's TRO**
16 **Application.**

17 The final two factors required for a TRO—balancing of the harm to the opposing
18 party and the public interest—merge when the Government is the opposing party. *See*,
19 *e.g.*, *Nken, supra*, at 435. Courts must "pay particular regard for the public consequences
20 in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456
21 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest
22 tip strongly in favor of Respondents.

23 The public interest in enforcement of United States immigration laws is significant.
24 *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef,*
25 *Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has
26 recognized that the public interest in enforcement of the immigration laws is significant.").
27 The public interest weighs in favor of denying the Application given that the only
28 circumstance that resulted in his release—the COVID 19 pandemic—is now over, and

Petitioner was taken into custody based on a recent, now second arrest for criminal domestic abuse. Moreover, any order that grants “particularly disfavored” relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to the Respondents and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states “The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c) (emphasis added). Here, because Petitioner has no valid visa, the amount of any bond should be akin to an appearance bond.

V. CONCLUSION

For all the above reasons, the Respondents respectfully request that Petitioner Joaquin E. Villalta Salazar’s application for a temporary restraining order be denied.

Respectfully submitted,

Dated: June 18, 2025

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Yujin Chun
YUJIN CHUN
Assistant United States Attorney

Attorneys for Federal Defendants-Respondents
Timothy Robbins, Todd M. Lyons, Kristi Noem, and
Pam Bondi

Certificate of Compliance under L.R. 11-6.2

Counsel of record for Federal Defendants-Respondents certifies that this brief
complies with the word limit of L.R. 11-6.1.