District Judge Kymberly K. Evanson
Magistrate Judge S. Brian A. Tsuchida

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

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| E-A-T-B,<br><br>Petitioner,<br>v.<br><br>CAMMILLA WAMSLEY, *et al.*,<br><br>Respondents[1]. | Case No. 2:25-cv-01192-KKE-BAT<br><br>RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER<br><br>Noted for Consideration:<br>August 5, 2025 |

## I. INTRODUCTION

This Court should deny Petitioner's Motion for a Temporary Restraining Order ("TRO") seeking his immediate release from immigration detention. Dkt. No. 24. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains him pursuant to 8 U.S.C. § 1226(a) pending the issuance of a final order of removal. Petitioner disputes the procedure used by ICE to re-detain him. But Petitioner has identified no emergency or immediate threat of irreparable harm that entitles him to the extraordinary remedy of mandatory injunctive relief. In fact, habeas briefing in this case is scheduled to be completed next week and then this matter will be ready for

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents' substitute Seattle Field Office Director Cammilla Wamsley for Drew Bostock.



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adjudication on the merits of this case. The briefing and adjudication of the habeas petition in the ordinary course are the appropriate mechanism for resolving the legal issues presented in the TRO Motion.

Petitioner filed the Motion simply to speed up the habeas process. *See Guy v. Tanner*, 2014 WL 2818684, at *3 (E.D. La. June 23, 2014) ("[petitioner's] motion [for TRO] is no more than a veiled attempt to expedite the resolution of his habeas petition"). He waited to file the Motion until after he filed his lengthy Response to the Return (Dkt. No. 22) but before Respondents had the opportunity to review the Response and reply – as provided for in this Court's Order for Return and Status Report ("RSR"). Dkt. No. 12. Petitioner improperly asks the Court to rule immediately in his favor on the ultimate issue in this case and to grant him the relief that he seeks in his habeas petition without the benefit of full briefing.

Accordingly, Respondents respectfully request that the Court deny Petitioner's TRO motion.

## II. BACKGROUND

### A. Factual Background

Petitioner is a native and citizen of Colombia who was apprehended shortly after entering the United States without inspection or parole on or about September 6, 2023. Dkt. No. 19, Hubbard Decl., ¶ 4. The Department of Homeland Security ("DHS") issued him a Notice to Appear, charging him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*, ¶ 5.

ICE released Petitioner on an Order of Recognizance due to a lack of detention space. *Id.*, ¶ 6; Dkt. No. 18-3, Order of Release on Recognizance. The Order specified that Petitioner's "release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program . . . Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention." Dkt. No. 18-



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3. Petitioner incurred at least two ATD violations. Hubbard Decl., ¶ 8.

On June 5, 2025, Petitioner appeared at his initial hearing in immigration court in Portland, Oregon. *Id.*, ¶ 9. A continuance was granted to June 18, 2025. *Id.* After his appearance at immigration court on June 18, 2025, ICE detained Petitioner pursuant to an arrest warrant. *Id.*, ¶¶ 10-12. ICE served him with a notice of custody determination explaining that he was to be detained pending a final administrative determination in his case. *Id.*, ¶ 13 & Ex. 2.

Petitioner was then transferred to the Northwest ICE Processing Center in Tacoma, Washington, that same day.

Petitioner appeared in immigration court on July 15, 2025. Hubbard Decl., ¶ 16. To date, he has not requested a bond redetermination hearing. Supplemental Hubbard Decl., ¶ 5 (dated Aug. 7, 2025), submitted herewith. His next appearance is scheduled for September 8, 2025. *Id.*, ¶ 6. However, Petitioner's counsel has requested a continuance. *Id.*

**B. Procedural History**

On June 18, 2025, Petitioner filed a habeas petition in the District Court of Oregon seeking, *inter alia*, his release from detention. Dkt. No. 4. The case was transferred to this District the following week. Dkt. No. 10. This Court issued an Order for Return and Status Report ("RSR") requiring Respondents to file a return by July 18, 2025, and to "note their return for consideration no earlier than 28 days after filing." Dkt. No. 12. Respondents filed their Return on July 18, 2025. Dkt. No. 17. On August 5, 2025, Petitioner filed a Motion for Leave to File Overlength Motions and Briefs (Dkt. No. 21) (seeking an extension of the word limit to 12,000 words). Without a decision on their motion, Petitioner filed a 38-page Response to the Return.[2] Dkt. No. 22.

[2] The brief does not indicate if it exceeded the 8,400-word limit set by LCR 7(e)(3), as it does not include the required certification of the number of words under LCR 7(e)(6).



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Shortly thereafter, Petitioner filed the instant TRO motion requesting this Court "to release him from custody and bar[] future arrest or detention by the Respondents, absent leave of this Court." TRO Mot., at 1.

## III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *See Winter*, 555 U.S. at 20 ("*Winter* factors").

"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 acting 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 v.*



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*Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (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 v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

Here, rather than preserving the status quo, Petitioner seeks mandatory injunctive relief in the form of an order requiring his immediate release from immigration detention.

## IV. ARGUMENT

### A. This Court should require Petitioner to meet the heightened mandatory injunction standard.

Petitioner's request for an order releasing him from immigration detention goes well beyond simply maintaining the status quo. Such an order constitutes mandatory injunctive relief. A party seeking mandatory injunctive relief "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original)). In general, mandatory injunctions should not be granted "unless extreme or very serious damage will result" and should not be issued "in doubtful cases or where the injury complained of is capable of compensation in damages." *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1979).

In contrast, Petitioner asks this Court to apply the lesser standard for prohibitory injunctive relief. TRO Mot., at 2-5. But this standard is inappropriate as the relief sought is clearly mandatory injunctive relief. Petitioner is not seeking to prevent future constitutional violations, "a classic form of a prohibitory injunction," by enjoining an agency policy. *Hernandez v. Sessions*, 872 F.3d 876, 998 (9th Cir. 2020). Instead, he asks this Court to require ICE to take affirmative action, by releasing him from immigration detention.

Furthermore, Petitioner incorrectly suggests that the alternative standard for injunctive



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relief would be appropriate here. TRO, at 3; *see Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (stating that a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied" (internal quotation omitted)). But given the greater showing required, courts have declined to apply the alternative, "serious questions" preliminary injunctive relief standard to cases involving mandatory injunctions. *See, e.g.*, *Maney v. Brown*, 516 F. Supp. 3d 1161, 1172 n.8 (D. Or. 2021) (citing *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1126, 1135 (C.D. Cal. 2015)).

Thus, this Court should require him to demonstrate that the law and facts clearly favor his position.

**B. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(a) and may seek release from detention through his administrative proceedings.**

ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1226(a). The Ninth Circuit has found that the Section 1226(a) and its implementing regulations satisfy due process. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209-10 (9th Cir. 2022). Since his detention began, Petitioner has had the right to seek the very relief he seeks here, a bond determination hearing which could lead to his release. 8 C.F.R. § 236.1(d)(1). But neither he nor his counsel have requested a bond redetermination hearing. Supp. Hubbard Decl., ¶ 5. Rather than utilizing the substantial procedural protections available under Section 1226(a), Petitioner improperly asks this Court to release him on an emergency basis. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209-10 (9th Cir. 2022) (Section 1226(a) and its implementing regulations satisfy due process).

Congress enacted a multi-layered statute that provides for the continued civil detention of noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or



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mandatory, as well as the kind of review process available. *Id*., at 1057. This case concerns the Government's responsibilities under 8 U.S.C. § 1226(a), which "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Here, ICE determined that Petitioner would be detained. Hubbard Decl., Ex. 2. Instead of seeking mandatory injunctive relief now, Petitioner should ask for his release through the administrative process available to him. This Court should not allow Petitioner to use a TRO motion to simply speed up the habeas process and seek the very relief that he has failed to seek through his administrative proceedings. The outcome of a bond redetermination hearing before an immigration judge may provide Petitioner with the relief sought here – release.

**C. Petitioner does not satisfy the requirements for preliminary relief.**

***1. Petitioner has not demonstrated that the law and facts clearly favor his position.***

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on his habeas petition, Petitioner must show that he is in custody in violation of the Constitution or laws or treaties of the United States. *See* 28 U.S.C. § 2241. He seeks immediate release from immigration detention based on his allegations that (1) his re-detention violated his substantive and procedural due process rights, and (2) that ICE's decision to detain him is arbitrary and



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capricious in violation of the Administrative Procedure Act ("APA"). TRO, at 1-2. Because Petitioner seeks a mandatory injunction his burden is heightened; he 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. The TRO motion falls very short of meeting this burden.

Petitioner provides no legal argument or factual support of his claims in the TRO motion. Instead, he refers this Court to his Response. TRO, at 2-3 (citing ECF 22). This "argument by incorporation" should not be accepted here. First, it procedurally is improper as Petitioner has not certified that the inclusion of the material cited in the Response would cause him to exceed the word limit for the TRO motion. LCR 65(b)(2) (8,400 words). Second, it would require this Court to make the ultimate decision in this case on an expedited basis. 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). Petitioner filed this Motion seeking a preliminary adjudication on the merits, as the blanket reference to his Response demonstrates.

Based on the TRO Motion, Petitioner has not demonstrated that the facts and law clearly favor his release.

***2. Petitioner has not shown irreparable harm.***

Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (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).



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Petitioner avers that he is irreparably harmed due to his purportedly unconstitutional detention. But this assertion does not satisfy this inquiry for mandatory injunctive relief. It only "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, Petitioner'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); *see also Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011) (not finding irreparable harm where a detained individual was required to exhaust his appeal of the denial of bond at a *Casas* hearing). "[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[.]" *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011). Unlike cases that he cites, Petitioner has not alleged any irreparable harms specific to him outside of the fact that he is detained like every other habeas petitioner seeking review of their detention. *See, e.g.*, *Mahdawi v. Trump*, No. 2:25-cv-389, 2025 WL 1243135, at *14 (D. Vt. Apr. 30, 2025) (alleging that detention will cause the petitioner to be unable to complete his undergraduate degree). He only points to the same alleged irreparable harm faced by any habeas corpus petitioner in immigration custody. *Taha v. Bostock*, No. 25-cv- 649-RSM, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025)

Furthermore, the timing of this motion does not support Petitioner's claim of irreparable harm. Petitioner did not seek preliminary injunctive relief when he filed his habeas petition. *See Garcia*, 786 F.3d at 746 (delay can undercut a claim of irreparable harm); *Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1377 (9th Cir.1985) ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm."). Nor did he seek preliminary injunctive relief or ask this Court for a shorter briefing schedule when the RSR



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was issued. Instead, he waited to file a TRO motion on the same day that he filed the Response, but before Respondents had the opportunity to review the Response or file a reply (which is due next week). In addition, Petitioner's actions do not support his claim of irreparable harm or the need of immediate mandatory injunctive relief. He has not requested a bond redetermination hearing in his immigration proceedings even though this could lead to his release from detention.

Accordingly, Petitioner he has not shown extraordinary circumstances warranting mandatory injunctive relief.

***3. The balance of the equities 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). Furthermore, the immigration laws and regulations provide for the relief sought here through the administrative process. This public interest outweighs Petitioner's private interest.

Accordingly, this Court should deny his TRO Motion.

## V. CONCLUSION

For these reasons, Petitioner has not satisfied the high burden of establishing entitlement to mandatory injunctive relief, and Respondents request this Court deny Petitioner's emergency motion.

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DATED this 7th day of August, 2025.

Respectfully submitted,

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*I certify that this memorandum contains 2,964 words, in compliance with the Local Civil Rules.*