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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 LUIS DAVID GARCIA-AYALA,
11
12 Petitioner,
13
14 v.
TONYA ANDREWS, ET AL.,
15
16 Respondents.

CASE NO. 2:25-CV-02070-DJC-JDP

RESPONDENTS' OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER

DATE: August 7, 2025

TIME: 3:30 p.m.

COURT: Hon. Daniel J. Calabretta

17
18 **I. INTRODUCTION**

19 Petitioner Luis David Garcia-Ayala's motion for a temporary restraining order ("TRO") should
20 be denied. Garcia-Ayala is mandatorily detained during his removal proceedings under 8 U.S.C.
21 § 1225(b)(1). Garcia-Ayala's argument for a TRO fails falls short of demonstrating a likelihood of
22 success on the merits or entitlement to his requested relief.

23 The United States acknowledges that this Court recently rejected similar arguments in a case
24 involving another alien detained under § 1225(b)(1). *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC,
25 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025). Accordingly, should the Court grant a TRO or
26 preliminary injunction, it requests that the Court decline to order Garcia-Ayala's release and instead
27 allow an administrative hearing to consider Garcia-Ayala's detention status. *Id.*
28

II. BACKGROUND

A. **Garcia-Ayala, an MS-13 member, enter the United States unlawfully and is placed in expedited removal.**

Petitioner Luis Garcia-Ayala is a native and citizen of El Salvador. Immigration Judge Decision, ECF 4-2, at 7. In approximately 2016, when he was nineteen or twenty years old, Garcia-Ayala began helping MS-13 in his hometown in El Salvador. Individual Calendar Hearing Tr., ECF 4-2, at 57, 63-64. In MS-13 parlance, Garcia-Ayala was a paro, the lowest rank within the gang. *Id.* at 66. When other members of MS-13 were operating, Garcia-Ayala watched out for police; if he saw any he warned the gang to get away. *Id.* at 85. Garcia-Ayala claims—and an Immigration Judge later found—that MS-13 coerced him into gang involvement to protect his family. *Id.* at 8 (noting Immigration Judge’s credibility finding), 65.

Garcia-Ayala was arrested in El Salvador and apparently convicted twice for marijuana possession. ECF 4-2 at 73-74. His first offense resulted in probation, but he was sentenced to four years of imprisonment for his second offense. *Id.* at 74. (Garcia-Ayala claims authorities planted the marijuana in his house that resulted in his second offense, *id.* at 73-74).

Garcia-Ayala became a full-fledged MS-13 member (known as a homeboy) in prison. *Id.* at 67. Garcia-Ayala asserts that the gang advanced him for his own protection—to make sure he was not transferred to a facility with a rival gang. *Id.* at 67. He was instead transferred to an MS-13-only facility, where he became a practicing Christian. *Id.* at 68. Upon release, Garcia-Ayala did not wish to join in MS-13 activities, so he traveled to the United States. *Id.* at 63.

Garcia-Ayala entered the United States on or about July 13, 2022. Declaration of Sellenia A. Romero (Romero Decl.) at ¶ 5. Garcia-Ayala did not enter the United States lawfully. Form I-213, Ex. 2 to Romero Decl., at 2. He did not possess the necessary legal documents to enter the United States, nor did he cross through a designated port of entry, nor submit to inspection. *Id.* at 2-3.

Given his unlawful entry, Garcia-Ayala was processed for expedited removal under Section 235(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1225(b)(1)). Romero Decl. ¶ 6. United States Citizenship and Immigration Services (USCIS) made a positive credible fear finding. *Id.* ¶ 7.

B. An Immigration Judge orders Garcia-Ayala removed; Garcia-Ayala appeals.

USCIS formal removal proceedings commenced in August 2022, when a Notice to Appear alleged Garcia-Ayala's unlawful entry. *Id.* ¶ 8; I-862, Ex. 1 to Romero Decl., at 1. An Immigration Judge conducted hearings in November 2022, December 2022 and January 2023. ECF 4-2 at 30. Garcia-Ayala sought asylum in the United States and sought to block the United States from removing him under the Convention Against Torture, claiming that Salvadoran authorities would torture him if he returned there. ECF 4-2 at 33-37.

The Immigration Judge issued a ruling in February 2023. ECF 4-2 at 29. The Immigration Judge rejected Garcia-Ayala's asylum request because Garcia-Ayala provided material support to MS-13, a terrorist organization. ECF 4-2 at 33-35. The Immigration Judge ordered Garcia-Ayala removed from the United States but deferred the removal under the Convention Against Torture. ECF 4-2 at 38-39. The Immigration Judge found that Garcia-Ayala would likely be tortured upon returning to El Salvador due to the Salvadoran government's policies regarding arrest and detention of MS-13 members without due process. ECF 4-2 at 35-38. Garcia-Ayala appealed the Immigration Judge's decision and the appeal remains pending. Romero Decl. ¶ 11.

The Department of Homeland Security (the Department) released Garcia-Ayala from custody on February 21, 2023, via an Order of Supervision (OSUP). Romero Decl. ¶ 10. Among other provisions, the OSUP required Garcia-Ayala to appear at times specified by the Department. OSUP, Ex. 5 to Romero Decl., at 1. One such appointment was scheduled for June 25, 2025 in Bakersfield, California. *Id.* at 2; I-213, Ex. 7 to Romero Decl., at 2. At that appointment, immigration officials returned Garcia-Ayala to custody. Romero Decl. ¶ 12; Ex. 7 to Romero Decl. at 2.

III. ARGUMENT

A. The Standard for Temporary Restraining Orders.

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). A party seeking a preliminary injunction faces a

“difficult task” in showing that they are entitled to such an “extraordinary remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation 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 [plaintiffs], as long as the second and third ... factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

B. Garcia-Ayala Is Not Likely to Succeed on the Merits.

1. The Supreme Court Has Upheld the Constitutionality of Mandatory Detention for Certain Noncitizens While Their Removal Proceedings Are Pending.

Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(1)¹ while his removal proceedings are pending, and that detention is both mandatory and constitutionally sound. Section 1225(b) lays out two tracks for people arriving unlawfully in the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Aliens who arrive without proper papers, like Garcia-Ayala, enter an expedited removal process under § 1225(b)(1) where detention is required: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.” *Id.* at 297. Detention is mandatory “throughout the completion of applicable proceedings.” *Id.* at 302.

That statutory mandate can be enforced as written: detention applies throughout removal proceedings. Because detention is required, Garcia-Ayala cannot succeed on the merits of his TRO and the Court should therefore deny it. *Lopez Contreras v. Oddo*, No. 3:25-CV-162, 2025 WL 2104428, at *5 (W.D. Pa. July 28, 2025) (denying TRO and habeas corpus petition for mandatorily detained alien). *See also Abdul-Samed v. Warden*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *3 (E.D. Cal. July 25, 2025) (noting that this is the interpretation of the Attorney General regarding § 1225(b)(1);

¹ Also referred to under its Immigration and Nationality Act (INA) provision, Section 235. *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1149 (9th Cir. 2022).

ultimately ordering a bond hearing in a case involving detention under 8 U.S.C. § 1226).

Generally, detention during immigration proceedings is “a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). However, this Court and others have raised the concern that § 1225(b)(1)’s mandatory detention provisions raise constitutional concerns. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025); *Abdul-Samed*, 2025 WL2099343, at *4-5 (noting that the constitutionality of mandatory detention under § 1225(b)(1) is an open question in the Ninth Circuit). Yet here, where Garcia-Ayala has not been in custody for a prolonged period, has potential administrative remedies, and is detained under § 1225(b)(1), no such constitutional question entitles him to release or to the granting of a TRO. *Lopez Contreras v. Oddo*, 2025 WL 2104428, at *6. Thus, the Court should deny the TRO.

This Court has taken a different path—determining that due process requires a form of procedural review even in mandatory-detention cases. *Doe*, 2025 WL 691664, at *3-4. The Court employed the factors in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) to evaluate that question. *Doe*, 2025 WL 691664, at *3. Those factors are: “[1] the private interest that will be affected by the official action; [2] the risk of an erroneous deprivation of such interest through the procedures used[;] and [3] the probable value, if any, of additional or substitute procedural safeguards. *Mathews*, 424 U.S. at 319.

The Court found that individuals retaken into immigration detention have a high private interest, reasoning that prolonged detention without a hearing serves a fundamental liberty interest, particularly where an individual has been previously freed from custody without apparent danger to the community. *Doe*, 2025 WL 691664, at *4. Despite the Court’s finding in *Doe*, the statutory scheme applying here (mandatory detention under Section 1225(b)(1)) indicates a lowered liberty interest for Garcia-Ayala.²

In weighing the liberty interest here, the Court should reject Garcia-Ayala’s claim that he was paroled from custody—or that any such parole was wrongly terminated. ECF 4 at 8-9. Mandatory-detention cases allow one type of release: discretionary release under 8 U.S.C. § 1182(d)(5)(A)³ “for urgent humanitarian reasons or significant public benefit.” *Id.*; *Ortega-Gonzales v. Holder*, 501 F.3d

² The Court likewise found that procedure used to re-initiate custody is “considerable,” and that the “effort and cost required to provide Petitioner with procedural safeguards is minimal.” *Id.* at *5. As with the liberty interest, however, the statutory scheme here counsels against this finding.

³ INA Section 212.

1111, 1114 (9th Cir. 2007). Only an explicit grant of parole triggers Section 1182 “humanitarian” parole, and that should be reflected on Form I-94, the standard form recording a parole determination. *Ortega-Gonzales*, 501 F.3d at 1115-16 (declining to find that conditional release of alien amounted to Section 1182 parole because the relevant release forms did not mention parole); *accord Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 748 (2023). DHS did not grant Garcia-Ayala parole: he was released from DHS custody on an order for supervision. Romero Decl. ¶ 10. The relevant forms contained no reference to Section 1182 or its implementing regulations. Ex. 5 to Romero Decl. Therefore Garcia-Ayala was not paroled.

Of course, the Supreme Court and the BIA have concluded that humanitarian parole is the sole and exclusive way to release a person in mandatory detention status for expedited removal. *Jennings*, 583 U.S. at 302; *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). The effect of the Department’s release (which asserted no such ground) is therefore unclear and supplies another reason for the Court to find that Garcia-Ayala is not likely to prevail on the merits and at most to require the Department of Homeland Security to evaluate Garcia-Ayala’s bond or parole eligibility. *Navarrete-Leiva v. Current or Acting United States AG*, No. 1:24-cv-00938-SKO (HC), 2024 U.S. Dist. LEXIS 226045, *10 (E.D. Cal. Dec. 13, 2024) (granting motion to dismiss habeas petition for individual detained under Section 1225(b)(1); petitioner was not entitled to release or compelled bond hearings regarding humanitarian parole). The Court should therefore find that Garcia-Ayala is not likely to succeed on the merits and should deny the TRO.

2. At Most, Garcia-Ayala is Entitled to an Administrative Hearing Regarding Parole or Release.

Even if the Court concludes that Garcia-Ayala is entitled to some type of relief, it should deny habeas release and the TRO. “[C]ompelled release of detainees is surely a remedy of last resort.” *Fraihat v. USCIS*, 16 F.4th 613, 642 (9th Cir. 2021). In the event that the petition is granted, the only appropriate relief is a bond or other administrative hearing, not release from detention. *See, e.g., Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (explaining that “an individualized determination as to his risk of flight and dangerousness” is the proper remedy “if the continued detention became unreasonable or unjustified”); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065-66 (9th Cir. 2008) (noting

1 detainee’s “opportunity to contest the necessity of his detention before a neutral decisionmaker and an
 2 opportunity to appeal that determination to the BIA” in rejecting a due process challenge to immigration
 3 detention); *Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at *4 (S.D. Cal.
 4 Feb. 13, 2018) (IJs are well suited to assess eligibility for release, while a district court “lacks the factual
 5 support to make a determination about Petitioner’s risk of flight or dangerousness to the community”).
 6 Thus, even if the Court determines that an administrative hearing is necessary to resolve due process
 7 concerns, it should not grant release or the remedies Garcia-Ayala seeks in the TRO.

8 **C. Garcia-Ayala Is Not Likely to Suffer Irreparable Harm.**

9 While the Ninth Circuit has recognized that “[a]n alleged constitutional infringement will often
 10 alone constitute irreparable harm,” *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th
 11 Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate “a
 12 sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a
 13 preliminary injunction.” *Assoc’d Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d
 14 1401, 1412 (9th Cir.1991)). Here, as demonstrated above and as in *Goldie’s Bookstore*, Petitioner’s
 15 purported constitutional claim is “too tenuous” to support an injunction. *Goldie’s Bookstore*, 739 F.2d
 16 at 472.

17 **D. The Balance of Equities and the Public Interest.**

18 Finally, the balance of the equities and public interest do not automatically tip toward Garcia-
 19 Ayala simply because he has alleged a due process violation. Even where constitutional rights are
 20 implicated, where a petitioner has not shown a likelihood of success on the merits of a claim, a court
 21 should not grant a preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).
 22 “The government has a strong interest in enforcing immigration laws.” *Abdul-Samed v. Warden*, 2025
 23 WL 2099343, at *8 (E.D. Cal. July 25, 2025) (concluding, however, that the government interest in
 24 detention “without a bond hearing” was outweighed by petitioner’s liberty interest). Here, given Garcia-
 25 Ayala’s mandatory detention and lack of parole, Garcia-Ayala cannot establish a likelihood of success
 26 on the merits, and the Court should deny his habeas petition and request for TRO.

IV. CONCLUSION

Section 1225(b)(1) mandates Garcia-Ayala's detention and the facts of this case present no due process concern, as it has not become unduly prolonged. Respondents respectfully request that the Court deny Petitioner's TRO motion and habeas petition. If the Court is inclined to grant some relief to Garcias-Ayala, it should order an administrative hearing to consider Ayala's entitlement to parole or release.

Dated: August 4, 2025

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