



1 than a veiled attempt to expedite the resolution of his habeas petition”). Petitioner improperly  
2 asks the Court to rule immediately in his favor on the ultimate issue in this case and to grant him  
3 the relief that he seeks in his habeas petition. Accordingly, Respondents respectfully request that  
4 the Court deny Petitioner’s TRO motion and simply address the habeas petition on the briefing  
5 submitted.

## 6 II. LEGAL STANDARD

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

## 17 III. ARGUMENT

### 18 A. The motion should be denied because it improperly seeks final relief

19 As a threshold matter, Petitioner’s TRO should be denied because it does not seek to  
20 merely maintain the status quo pending a determination on the merits. Rather, it improperly  
21 seeks the ultimate relief he demands in this case. The purpose of a preliminary injunction “is to  
22 preserve the status quo and the rights of the parties until a final judgment issues in the cause.”  
23 *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary  
24 injunction may not be used to obtain “a preliminary adjudication on the merits,” but only to

1 preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*,  
2 739 F.2d 1415, 1422 (9th Cir. 1984).

3 The motion for a TRO and habeas petition both seek the same relief, using the same  
4 language: “immediate” release from custody. By seeking the same relief in both his habeas  
5 petition and his TRO motion, Petitioner is effectively circumventing the habeas proceeding. The  
6 Ninth Circuit has firmly rejected this approach, concluding that “judgment on the merits in the  
7 guise of preliminary relief is a highly inappropriate result.” *Senate of Cal. v. Mosbacher*, 968  
8 F.2d 974, 978 (9th Cir. 1992); *see also Doe v. Bostock*, No. 24-326-JLR-SKV, 2024 WL  
9 2861675, \*2 (W.D. Wash. June 6, 2024). Petitioner’s TRO motion should be denied for the same  
10 reason.

11 **B. Petitioner has not demonstrated that the law and facts clearly favor his**  
12 **position**

13 Likelihood of success on the merits is a threshold issue: “[W]hen a plaintiff has failed to  
14 show the likelihood of success on the merits, [the court] need not consider the remaining three  
15 *Winters* elements.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation  
16 omitted). To succeed on his habeas petition, Petitioner must show that he is in custody in  
17 violation of the Constitution or laws or treaties of the United States. *See* 28 U.S.C. § 2241. He  
18 seeks immediate release from immigration detention based on his allegations that: (1) his re-  
19 detention violated his substantive and procedural due process rights, and (2) that ICE’s decision  
20 to detain him is arbitrary and capricious in violation of the Administrative Procedure Act  
21 (“APA”). The TRO motion falls short of meeting this burden.

22 Petitioner provides no legal argument or factual support of his claims in the TRO motion.  
23 Instead, he refers this Court to his Response. Dkt. 37, pp. 3-4 (citing “ECF 35”). This “argument  
24 by incorporation” should not be accepted here. First, it procedurally is improper as Petitioner has

1 not certified that the inclusion of the material cited in the Response would cause him to exceed  
2 the word limit for the TRO motion. LCR 65(b)(2) (8,400 words). Second, it would require this  
3 Court to make the ultimate decision in this case on an expedited basis. As noted above, the  
4 purpose of preliminary injunctive relief is to preserve the status quo pending final judgment,  
5 rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line*, 739 F.2d at 1422.  
6 Petitioner filed this Motion seeking a preliminary adjudication on the merits, as the blanket  
7 reference to his Response demonstrates.

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

10 **C. Petitioner has not shown irreparable harm.**

11 Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory  
12 injunctive relief he seeks. To do so, he must demonstrate “immediate threatened injury.”  
13 *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los*  
14 *Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th  
15 Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555  
16 U.S. at 22.

17 Petitioner avers he is irreparably harmed due to his purportedly unconstitutional  
18 detention. But this assertion does not satisfy this inquiry for mandatory injunctive relief. It only  
19 “begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has  
20 suffered a constitutional injury.” *Cortez v. Nielsen*, No. 19-754-PJH, 2019 WL 1508458, at \*3  
21 (N.D. Cal. Apr. 5, 2019). Moreover, Petitioner’s “loss of liberty” is “common to all [noncitizens]  
22 seeking review of their custody or bond determinations.” *Resendiz v. Holder*, No. 12-4850-  
23 WHA, 2012 WL 5451162, at \*5 (N.D. Cal. Nov. 7, 2012). “[A] noncitizen must show that there  
24 is a reason specific to his or her case, as opposed to a reason that would apply equally well to all

1 aliens and all cases, that removal would inflict irreparable harm[.]” *Leiva-Perez v. Holder*, 640  
2 F.3d 962, 969 (9th Cir. 2011).

3 Unlike cases that he cites, Petitioner has not alleged any irreparable harms specific to him  
4 outside of the fact that he is detained like every other habeas petitioner seeking review of their  
5 detention. *See, e.g., Mahdawi v. Trump*, 781 F. Supp. 3d 214, 235 (D. Vt. 2025) (alleging that  
6 detention will cause the petitioner to be unable to complete his undergraduate degree). He only  
7 points to the same alleged irreparable harm faced by any habeas corpus petitioner in immigration  
8 custody. *Taha v. Bostock*, No. 25-649-RSM, 2025 WL 1126681, at \*3 (W.D. Wash. Apr. 16,  
9 2025).

10 Furthermore, the timing of this motion does not support Petitioner’s claim of irreparable  
11 harm. Petitioner did not seek preliminary injunctive relief when he filed his habeas petition. *See*  
12 *Garcia*, 786 F.3d at 746 (delay can undercut a claim of irreparable harm); *Oakland Tribune, Inc.*  
13 *v. Chronicle Publ’g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (“Plaintiff’s long delay before  
14 seeking a preliminary injunction implies a lack of urgency and irreparable harm.”). Nor did he  
15 seek preliminary injunctive relief or ask this Court for a shorter briefing schedule when the RSR  
16 was issued. Instead, he waited to file a TRO motion one business day after he filed the Response,  
17 but before Respondents had the opportunity to review the Response or file a reply.

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

20 **D. The balance of the equities and public interests favor the Government.**

21 It is well settled that the public interest in enforcement of United States’ immigration  
22 laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976);  
23 *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme  
24 Court has recognized that the public interest in enforcement of the immigration laws is

1 significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always  
2 a public interest in prompt execution of removal orders). Furthermore, the immigration laws and  
3 regulations provide for the relief sought here through the administrative process. This public  
4 interest outweighs Petitioner’s private interest.

5 Accordingly, this Court should deny his TRO Motion.

6 **IV. CONCLUSION**

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

10 DATED this 24th day of September, 2025.

11 Respectfully submitted,

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*I certify that this memorandum contains 1,488  
words, in compliance with the Local Civil  
Rules.*