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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SALAM MAKLAD, Petitioner, v. RON MURRAY, Warden of Mesa Verde ICE Processing Center, et al., Respondents.	CASE NO. 1:25-CV-00946-JLT-SAB OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER DATE: August 8, 2025 TIME: 9:00 a.m.

This Court should deny the requested TRO because there is no authority that would permit—much less require—a court to hold a hearing on changed circumstances before immigration authorities may re-detain petitioner. Because there is no regulatory, statutory, or constitutional requirement that a hearing on changed circumstances precede petitioner's re-detention on changed circumstances, petitioner fails to meet his burden of establishing a basis for relief, and the request for a TRO and injunctive relief should be denied.

I. BACKGROUND

A. Maklad, a Citizen of Syria, was Detained for Expedited Removal in September 2022

Petitioner Salam Maklad is a native and citizen of Syia, who was encountered in the Rio Grande Valley, Texas Border Patrol Sector after illegally entering from Mexico on September 5, 2022. Declaration para. 4, 5.

On that date, Maklad was processed and detained for expedited removal under section 235(b) of the Immigration and Nationality Act (INA). Declaration para. 7.

B. Maklad was Paroled under INA § 212(d)(5)

Based on her claim of fear of returning to her originating country, Maklad was referred to United States Citizen and Immigration Services (USCIS) for a credible fear review, and was paroled pursuant to ICE authority under INA § 212(d)(5), as an alternative to mandatory detention, during the pendency of that review. Declaration para. 8, 9.

C. Maklad's Re-Detention

On July 9, 2025, Maklad was re-detained by immigration authorities pursuant to the continued expedited removal processing. Declaration para. 10.

Maklad is presently detained at the Mesa Verde ICE Processing Center in Bakersfield, California.

II. MAKLAD CANNOT SHOW SHE HAS MET THE REQUIREMENTS FOR A TRO

A. Standard for TRO

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). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Plaintiffs' burden is aptly described as "heavy." *Id.* A preliminary injunction requires "substantial proof" and a "'clear showing.'" *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis 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). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

As the purpose of preliminary injunctive relief is to preserve the status quo pending final adjudication on the merits, there is "heightened scrutiny" for mandatory preliminary injunctions, which is what Petitioner seeks. *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). "A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014). Where "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee of Cent. American Refugees v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1442 (9th Cir. 1986).

B. <u>The Proposed TRO Seeks to Alter the Status Quo</u>

Petitioner's proposed TRO in this case would require a "neutral decisionmaker"[1] to hold a hearing before he could be brought back into immigration custody. ECF No. 2 pg. 10. A different Judge of this district recently encountered this same TRO request and found no authority to enjoin the government from re-detention. *Quoc Chi Hoac v. Becerra*, 2:25-cv-1740 DC (June 30, 2025).

The purpose of a preliminary injunction is to preserve the status quo between the parties pending a resolution of a case on the merits. *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir 2010). To that end, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

In her TRO, Petitioner does not seek to maintain the status quo against irreparable injury pending a determination on the merits. Instead, she requests the same relief she seeks on the merits. *Compare* ECF 1 *with* ECF 2. Petitioner's TRO should be denied because through this emergency motion, she seeks the ultimate relief she demands in this case: a prohibition on his re-detention unless the court first holds a hearing that is not set forth in any statute or regulation. Presenting the claim to the Court in this

[1] In the *Quac Chi Hoac* immigration TRO, recently decided by Judge Coggins, a different petitioner used the same terminology, "neutral decisionmaker," but clarified at oral argument that he meant that term to include district court judges, but not immigration judges. 2:25-cv-1740. Petitioner in this case appears to have used the same intentionally vague term, "neutral decisionmaker," but does not clarify which judge he believes must hold the hearing on changed circumstances, nor where that requirement for a pre-detention hearing originates.

way deprives the Court of complete and considered briefing on the merits of Petitioner's claim.

The Ninth Circuit has rejected this approach stating, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). This district has likewise disallowed this approach. *See, e.g., Keo v. Warden of Mesa Verde Ice Processing Center*, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024) (denying the TRO of an in custody detainee who sought the same relief as in the habeas petition finding "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits."). Other districts agree. *See, e.g., Doe v. Bostock*, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024) (same). This Petitioner's TRO should be denied for the same reasons.

C. Expedited Removal Authority

Petitioner has been detained for expedited removal pursuant to INA § 235. Expedited Removal provisions can be applied at any time. *See* 8 C.F.R. § 235.3(b)(1)(ii). Once a petitioner is in expedited removal proceedings, that individual is subject to mandatory detention. INA § 235(b)(1)(B)(iii)(IV). The petitioner has remained in an expedited removal proceeding since September 2022. Her parole was at the discretion of ERO. DHS retains discretion to redetermine or revoke bond at any time following release. 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9). There is no hearing requirement before immigration authorities decide to re-detain an individual. *Johnson v. Arteaga-Martinez*, 593 U.S. 573, 581 (2022)).

Petitioner points to no authority that would require a hearing before she can be taken back into immigration detention on expedited removal procedures. Because she has provided the Court with no such authority, she cannot demonstrate a likelihood of success on the merits.

D. Petitioner has not met her heavy burden to show she is likely to suffer irreparable harm without immediate injunctive relief.

Maklad has not articulated an irreparable harm that can only be remedied with immediate injunctive relief. The fact that petitioner has re-entered immigration detention is not an extraordinary part of the removal process, particularly where the noncitizen has entered expedited removal proceedings.

Immigration laws have long authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *Demore v. Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). In the Immigration and Nationality Act, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523 n.7) ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

Here, the expedited removal authority, INA § 235, authorizes immigration detention. The fact that Maklad is once again detained does not itself meet her burden of proving a likelihood of irreparable injury.

E. The Immigration and Nationality Act strips this Court of the authority to enjoin removal.

The Immigration and Nationality Act strips this Court of jurisdiction over the executive's decision to execute an order of removal: "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). This jurisdiction-stripping provision includes a prohibition on district courts exercising injunctive relief to forestall removal via habeas cases. *Id.*; *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (holding that the district court could not enjoin removal via a habeas petition).

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III. CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court deny the TRO.

Dated: August 5, 2025

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By: /s/ STEPHANIE M. STOKMAN
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