

ERIC GRANT
United States Attorney
ZULKAR KHAN
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700
Facsimile: (916) 554-2900

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RODRIGO A. PAZ HERNANDEZ,

Petitioner,

v.

MINGA WOFFORD, ET AL.,¹

Respondents.

CASE NO. 1:25-CV-00986

OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Rodrigo A. Paz Hernandez is mandatorily detained during his removal proceedings under 8 U.S.C. § 1225(b)(1). The following facts undercut Petitioner's motion for temporary restraining order ("TRO"): he entered the United States only in 2024, he is in expedited removal, he has no statutory entitlement to being present in the United States, and in this context, neither does he have any constitutional entitlement.² Petitioner's TRO motion also overlaps with his petition for writ of habeas

¹ Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). Here, Petitioner's custodian is the facility administrator at the Mesa Verde Ice Processing Center in Bakersfield, California.

² The United States acknowledges that other judges in this district recently rejected similar arguments in a case involving another alien detained under § 1225(b)(1). *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025). The government disagrees for the reasons set forth below.

corpus, and it fails to demonstrate a likelihood of success on the merits or entitlement to his requested relief.³

II. BACKGROUND

Petitioner is a native of El Salvador who entered the United States on May 6, 2024. Declaration of Deportation Officer Juan C. Abad (“Abad Decl.”) at ¶ 6. Petitioner entered the United States without inspection, admission, or parole in El Paso. *Id.* Petitioner did not enter the United States lawfully. Form I-213, Exhibit 1 to Abad Decl., at 2.

On May 6, 2024, the Department of Homeland Security (“DHS”) initiated removal proceedings against Petitioner and charged him under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, issuing him a Notice to Appear (“NTA”). NTA, Exhibit 2 to Abad Decl., at 1. After initiating removal proceedings, CPB released Petitioner on his own recognizance, pending his removal proceedings. Exhibit 1 to Abad Decl., at 3; Abad Decl. ¶ 6.

The Immigration Judge sustained the charge of removability and deemed Petitioner inadmissible to the United States. Abad Decl. ¶ 9. After Petitioner’s immigration court hearing, officers from the U.S. Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) took Petitioner into custody pursuant to a Warrant of Arrest of Alien, during the pendency of his removal proceedings. Abad Decl. ¶ 10; Exhibit 3 to Abad Decl.

That same day, on July 8, 2025, Petitioner filed a Motion for Custody Redetermination Hearing (“Bond Motion”) with the Immigration Court. Exhibit 4 to Abad Decl. On July 18, 2025, DHS filed an opposition to the Bond Motion, asserting that Petitioner is subject to mandatory detention under section 235(b) of the Immigration and Nationality Act (INA), 8 U.S.C. §1225, and he is also within a class of aliens described in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) that subjects him to mandatory detention. Abad Decl. ¶ 12.

On July 25, 2025, the Immigration Judge entered an order denying Petitioner’s request for a change in custody status on grounds that the “[t]he Court lacks jurisdiction over Respondent’s request for custody redetermination.” Exhibit 5 to Abad Decl. (citing *Matter of Q. Li*). On July 30, 2025, the

³ The Court has set a briefing schedule for petition for writ of habeas corpus, so the Respondent will file its response to the petition according to that schedule. ECF No. 7.

1 Immigration Judge granted DHS's motion to dismiss filed on July 18, 2025, and Petitioner's
 2 immigration court case was dismissed without prejudice. Exhibit 6 to Abad Decl.

3 III. LEGAL STANDARD

4 A. Standard for Temporary Restraining Orders.

5 Temporary restraining orders are governed by the same standard applicable to preliminary
 6 injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111,
 7 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def.*
 8 *Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a
 9 "difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst. v.*
 10 *Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

11 "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
 12 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
 13 equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786
 14 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious
 15 questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the
 16 second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th
 17 Cir. 2017).

18 IV. ARGUMENT

19 On August 8, 2025, Petitioner filed a Petition for Writ of Habeas Corpus alleging substantive and
 20 procedural due process violations under the Fifth Amendment. ECF No. 1 ¶¶ 115-125. The habeas
 21 petition seeks Petitioner's immediate release from custody, an order prohibiting him transfer outside of
 22 this District, an order prohibiting his deportation, an order prohibiting his re-arrest without a hearing to
 23 contest that re-arrest before a neutral adjudicator, and an order enjoining the government not to transfer
 24 him outside of the District or deport him for the duration of the proceeding. ECF No. 1 at 5-6, 28-29.
 25 On August 8, 2025, Petitioner also filed this TRO reiterating his claims and seeking the same relief on
 26 an emergent basis. ECF No. 4 at 23.

27 A. Petitioner's TRO Should be Denied Because It Improperly Seeks the Same Relief as His 28 Habeas Petition

Petitioner's TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits but instead seeks the ultimate relief he demands in this case. Compare ECF Nos. 1 and 4. The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Here, Petitioner's TRO and habeas petition both seek the same relief: his immediate release from custody, an order prohibiting his transfer outside of this District, and an order prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. ECF No. 1 at 5-6, 28-29., Prayer; ECF No. 4 at 23. By seeking the same relief in both motions, Petitioner was particularly burdening this court and trying to get two bites of the apple: namely a decision from the District Judge on the TRO and findings and recommendations from the Magistrate Judge on the habeas petition through the screening process. EDCA LR 302(c).

The Ninth Circuit has rejected Petitioner's 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 Court has likewise disallowed this approach. See, e.g., *Keo v. Warden of Mesa Verde Ice Processing Center*, No. 1:24-cv-00919-HBK, 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*, No. C24-0326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024) (same). Petitioner's TRO should be denied for the same reasons.

B. Petitioner is Not Likely to Succeed on the Merits Because His Mandatory Detention is Constitutional and His Due Process Rights Were Not Violated

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

1 8 U.S.C. § 1225(b)(1),⁴ and that detention is both mandatory and constitutionally sound. Section
2 1225(b) lays out two tracks for people arriving unlawfully in the United States. *Jennings v. Rodriguez*,
3 583 U.S. 281, 287 (2018). Aliens who arrive without proper papers, like Petitioner, enter an expedited
4 removal process under § 1225(b)(1) where detention is required: “Read most naturally, §§ 1225(b)(1)
5 and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”
6 *Id.* at 297. Detention is mandatory “throughout the completion of applicable proceedings.” *Id.* at 302.

7 The courts have recognized that “there is little question that the civil detention of [noncitizens]
8 during removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable
9 ... [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance
10 that, if ordered removed, the [noncitizens] will be successfully removed.’” *Prieto-Romero v. Clark*, 534
11 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

12 That statutory mandate can be enforced as written: detention applies throughout removal
13 proceedings. Because detention is required, Petitioner cannot succeed on the merits of his TRO and the
14 Court should therefore deny it. *Lopez Contreras v. Oddo*, No. 3:25-CV-162, 2025 WL 2104428, at *5
15 (W.D. Pa. July 28, 2025) (denying TRO and habeas corpus petition for mandatorily detained alien). *See*
16 *also Abdul-Samed v. Warden*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *3 (E.D. Cal. July
17 25, 2025) (noting that this is the interpretation of the Attorney General regarding § 1225(b)(1);
18 ultimately ordering a bond hearing in a case involving detention under 8 U.S.C. § 1226).

19 Generally, detention during immigration proceedings is “a constitutionally valid aspect of the
20 deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). However, this Court and others have
21 raised the concern that § 1225(b)(1)’s mandatory detention provisions raise constitutional concerns.
22 *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025);
23 *Abdul-Samed*, 2025 WL2099343, at *4-5 (noting that the constitutionality of mandatory detention under
24 § 1225(b)(1) is an open question in the Ninth Circuit). Yet here, where Petitioner has not been in
25 custody for a prolonged period, and is detained under § 1225(b)(1), no such constitutional question
26

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

entitles him to release or to the granting of a TRO. *Lopez Contreras v. Oddo*, 2025 WL 2104428, at *6.

Petitioner's due process rights were not violated. The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals. . ." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst*, 408 U.S. at 767.

Thus, applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute. "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). In 2020, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" explaining that an individual who illegally crosses the border is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). Accordingly, Petitioner's due process rights are limited to whatever statutory rights Congress provides. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (same). None of Petitioner's constitutional or due process rights were violated and his TRO should be denied.

C. Petitioner is Not Likely to Suffer Irreparable Harm

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

1 purported constitutional claim is “too tenuous” to support an injunction. *Goldie’s Bookstore*, 739 F.2d
2 at 472.

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

4 The balance of the equities and public interest do not automatically tip toward Petitioner simply
5 because he has alleged a due process violation. Even where constitutional rights are implicated, where a
6 petitioner has not shown a likelihood of success on the merits of a claim, a court should not grant a
7 preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The Executive
8 also has an important interest in exercising its enforcement authority. “The government has a strong
9 interest in enforcing immigration laws.” *Abdul-Samed v. Warden*, 2025 WL 2099343, at *8 (E.D. Cal.
10 July 25, 2025) (concluding, however, that the government interest in detention “without a bond hearing”
11 was outweighed by petitioner’s liberty interest). Here, given Petitioner’s mandatory detention,
12 Petitioner cannot establish a likelihood of success on the merits, and the Court should deny his habeas
13 petition and request his TRO. Accordingly, the public interest is best served by denying Petitioner’s
14 TRO.

15 **E. Petitioner Qualifies for Expedited Removal**

16 Petitioner’s TRO fails because ICE has discretion to change his removal procedure. Expedited
17 removal can be applied at any time for an alien who fits within specified criteria. 8 C.F.R. §
18 235.3(b)(1). Here, Petitioner falls within the designation that applies to aliens who have “not been
19 admitted or paroled into the United States” and have not “been physically present in the United States
20 continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.”
21 *Id.* Specifically, Petitioner unlawfully entered the United States in May of 2024, and was determined
22 inadmissible on July 8, 2025. Abad Dec. ¶¶ 6 and 9. Petitioner has not shown that she has been
23 physically present in the United States continuously for the 2-year prior immediately prior to July 8,
24 2025. Petitioner admittedly did not have the necessary documents to enter, pass through or remain in
25 the United States. Abad Dec. ¶ 6. Petitioner also falls under the 2004 designation, which applies to
26 aliens who (i) “are physically present in the U.S. without having been admitted or paroled,” (ii) “are
27 encountered by an immigration officer within 100 air miles of any U.S. international land border,” and
28 (iii) cannot establish “that they have been physically present in the U.S. continuously for the 14-day

1 period immediately prior to the date of encounter.” 2004 Designation, 69 Fed. Reg. at 48,880.

2 Because he was a qualifying noncitizen, Petitioner was subject to expedited removal
3 proceedings.

4 **F. Petitioner Seeks Unlawful Relief**

5 Petitioner’s request for relief goes beyond what is permissible by statute. This Court cannot
6 issue an order prohibiting Petitioner’s re-arrest without a hearing to contest that re-arrest before a neutral
7 decisionmaker. *Phan v. Moises Becerra*, 2:25-cv-01757-DC-JDP (June 30, 2025). Petitioner is also not
8 entitled “to immediate release from custody” as requested. ECF 1, at 19, Prayer for Relief. Petitioner is
9 also not entitled to “an order prohibiting ICE from re-detaining petitioner” or “transferring Petitioner
10 outside of this District”. ECF 1, at 19. The Court has no jurisdiction to bar execution of a future
11 removal order. 8 U.S.C. § 1252(g). The INA Act grants the discretion over the placement and housing
12 of detained aliens to the executive branch. Specifically, 8 U.S.C. § 1231(g)(1) “gives both
13 ‘responsibility’ and ‘broad discretion’ to the Secretary ‘to choose the place of detention for deportable
14 aliens.’” *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022) (citing *Comm. of Cent. Am.*
15 *Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986), amended by 807 F.2d 769 (9th Cir. 1986));
16 *Y.G.H. v. Trump*, No. 1:25-CV-00435-KES-SKO, 2025 WL 1519250, at *9 (E.D. Cal. May 27, 2025).
17 As such, the Court should deny Petitioner’s requested relief.

18 Finally, if any relief is granted, pursuant to Rule 65(c), “[t]he court may issue a preliminary
19 injunction or a temporary restraining order only if the movant gives security in an amount that the court
20 considers proper to pay the costs and damages sustained by any party found to have been wrongfully
21 enjoined or restrained.” Fed. R. Civ. P. 65(c). If the Court grants a TRO or preliminary injunctive relief,
22 the United States respectfully requests that the Court require Petitioner to post security during the
23 pendency of the Court’s order in an amount that the Court considers appropriate under Rule 65(c).

24 **G. Should the Court Order a Bond Hearing, the Burden is on Petitioner**

25 Should the Court order a bond hearing, Petitioner is mistaken that the burden should be on the
26 government to justify his detention by clear and convincing evidence. The Constitution does not require
27 the government to bear the burden of establishing that the noncitizen will be a flight risk or danger—
28 much less that the government be subject to a clear-and-convincing-evidence standard—to justify

temporary detention pending removal proceedings. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings, notwithstanding that the government has never borne the burden to justify that detention by clear and convincing evidence. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538; *Zadvydas*, 533 U.S. at 701. In fact, the Supreme Court has repeatedly upheld detention pending removal proceedings on the basis of a categorical, rather than individualized, assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And in *Zadvydas*, the Court placed the burden on the noncitizen, not the government, to show that his detention was unjustified. *Zadvydas*, 533 U.S. at 701 (noncitizen must first “provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” only after which “the Government must respond with evidence sufficient to rebut that showing”).

Indeed, the Ninth Circuit questioned (in the § 1226(a) context) how the burden-shifting and standard of proof that Petitioner demands could be constitutionally required:

Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases. There is no reason to believe that, as a general proposition, the government will invariably have more evidence than the alien on most issues bearing on alleged lack of future dangerousness or flight risk.

Rodriguez Diaz, 53 F.4th at 1211 (9th Cir. 2022). Accordingly, if the Court grants Petitioner a bond hearing, the burden at any such bond hearing is properly placed on him.

V. CONCLUSION

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

Dated: August 14, 2025

ERIC GRANT
United States Attorney

By: /s/ ZULKAR KHAN
ZULKAR KHAN
Assistant United States Attorney