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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NORWIN ALEJANDRO GARCIA BARRERA,

Petitioner,

v.

TONYA ANDREWS, Facility Administrator of Golden State Annex Detention Facility, et al.,[1]

Respondents.

CASE NO. 1:25-CV-01006-JLT-SAB

OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

DATE: August 21, 2025
TIME: 1:30 p.m.
COURT: Hon. Jennifer L. Thurston

This Court should deny the requested temporary restraining order because there is no authority

[1] Respondent moves to strike and dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief may only name 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); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir, 1996); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things, 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 Golden State Annex located in McFarland, California.

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

Petitioner Norwin Alejandro Garcia Barrera is a native and citizen of Nicaragua. Declaration of Sellenia A. Romero ¶ 6. He entered the United States on or about September 9, 2022, at or near El Paso, Texas. *Id.* He was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. *Id.* Upon apprehension, he was paroled into the United States. *Id.* The Department of Homeland Security issued a Notice to Appear on February 27, 2023. *Id.*

The Petitioner was arrested by the Contra Costa County Sheriff's Office for Domestic Battery, in violation of California Penal Code § 243(e)(1). Romero Declaration ¶ 7.

On July 23, 2025, the Petitioner appeared in Immigration Court and pleaded to the allegations and charges in the Notice to Appear, and the Immigration Judge found the Petitioner inadmissible to the United States as alleged in the Notice to Appear. Romero Declaration ¶ 9. At the hearing, the Department of Homeland Security moved to dismiss the immigration court proceedings with the intention of Immigration and Customs Enforcement's Enforcement and Removal Operations processing the Petitioner for expedited removal. *Id.* The Immigration Judge granted the motion. *Id.* The Petitioner was therefore arrested pursuant to a Warrant of Arrest of Alien and taken into custody. Romero Declaration ¶ 10. The Petitioner remains subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A). Romero Declaration ¶ 11. As of August 15, 2025, the Petitioner had not filed and served an appeal to the BIA from the Immigration Judge's dismissal order. Romero Declaration ¶ 12.

II. GARCIA BARRERA CANNOT SHOW THAT HE MEETS 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 the Immigration Court to hold a hearing before he could be brought back into immigration custody. ECF No. 4 at 8-10.

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 his TRO, Petitioner does not seek to maintain the status quo against irreparable injury pending a determination on the merits. Instead, he requests the same relief he seeks on the merits. Petitioner's TRO should be denied because, through this emergency motion, he seeks the ultimate relief he demands in this case: a prohibition on his re-detention unless the Court first holds a hearing that is not required by any statute or regulation. Presenting the claim to the Court in this 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.*, 968 F.2d at 978. 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 is detained for expedited removal pursuant to 8 U.S.C. § 1225. 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. 8 U.S.C. § 1225 (b)(1)(A)(i) The Petitioner's parole was at the discretion of ICE Enforcement and Removal Operations (ERO). DHS retains discretion to redetermine or revoke bond at any time following release. 8 C.F.R. §§ 236.1(c)(9) ("When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled."). There is no bond hearing available for a noncitizen in expedited removal proceedings.

Johnson v. Arteaga-Martinez, 596 U.S. 573, 581 (2022).

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

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

The Petitioner 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.").

III. CONCLUSION

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

Respectfully submitted,

Dated: August 18, 2025

ERIC GRANT
United States Attorney

/s/Jeffrey J. Lodge
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