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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

NORWIN ALEJANDRO GARCIA BARRERA,

Petitioner,

v.

TONYA ANDREWS, Facility Administrator of Golden State Annex Detention Facility;

POLLY KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office;

TODD LYONS, Acting Director of United States Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of the United States Department of Homeland Security,

PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No. 1:25-cv-01006-JLT-SAB

REPLY IN SUPPORT OF PETITIONER'S EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Norwin Alejandro Garcia Barrera ("Petitioner" or "Mr. Garcia") respectfully submits this reply brief in response to Respondents' Opposition to Motion for Temporary Restraining Order ("Opp.") (Dkt. 10). Respondents presume that Mr. Garcia is detained for expedited removal and subject to mandatory detention under 8 U.S.C. § 1225. Opp. at 4-5. This is not true because Mr. Garcia has been in and continues to be in 8 U.S.C. § 1229a proceedings as his appeal is pending with the Board of Immigration Appeals ("BIA")[1]. *See* Exhibit 1, BIA Filing Receipt for Appeal. Mr. Garcia cannot be placed into expedited removal proceedings because he has been in the United States for over two years. Further, Respondents claim that the request for temporary restraining order ("TRO") seeks to alter the status quo and seeks the same relief as on Petitioner's merits. Opp. at 3-4. Petitioner is seeking the status quo, which is "the moment prior to the Petitioner's likely illegal detention" *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025), which would be Mr. Garcia's status before his detention. Mr. Garcia requests to be returned to the status quo, before he was illegally detained, while his habeas petition is heard. The relief that Petitioner seeks is procedurally appropriate.

ARGUMENT

I. The scope of relief that Petitioner seeks is procedurally appropriate.

Respondents' contention that the TRO should be denied because Petitioner seeks "judgment on the merits in the guise of preliminary relief" fails. Opp. at 4. Petitioner seeks to preserve the status quo until a final judgment is issued. The status quo is "the last uncontested status which preceded the pending controversy." *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)). Put differently, "the status quo is 'the legally relevant relationship between the parties *before* the controversy arose,'" not merely the situation "at the time of the lawsuit." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664,

[1] Respondents noted that "Petitioner had not filed and served an appeal to the BIA from the Immigration Judge's dismissal order." Opp. at 2. Respondent is submitting as Exhibit 1, the filing receipt for the BIA appeal dated August 18, 2025, which took a week to process, and the e-mail dated August 10, 2025 confirming of service of the appeal through the EOIR Courts & Appeals System (ECAS).

684 (9th Cir. 2023) (emphasis added). Here, the last uncontested status was "the moment prior to the Petitioner's likely illegal detention." *Pinchi*, 2025 WL 1853763, at *3; *see Doe*, 2025 WL 691664, at *2. The requested TRO would merely restore that status quo; it would *not* deprive "the Court of complete and considered briefing on the merits of Petitioner's claim." Opp. 4. The status quo prior to Respondents' unlawful conduct was that Mr. Garcia was released on parole into the interior of the United States in September 2022, where he and his partner were raising their two daughters, working, and pursuing his asylum claim in immigration court. *See* Dkt. 4-2, Declaration of Norwin Alejandro Garcia Barrera. The habeas petition will determine whether there was a violation of Petitioner's due process rights under the Fifth Amendment and whether a pre-deprivation hearing is required before Respondents can detain him again.

More importantly, courts routinely grant habeas petitioners' TRO motions seeking the same relief sought in the petition, including release and/or a pre-deprivation hearing. *See, e.g.*, *Arostegui Castellon v. Kaiser*, No. 1:25-cv-00968 JLT EPG, 2025 WL 2373425, at *12 (E.D. Cal. Aug. 14, 2025); *Maklad v. Murray*, No. 1:25-cv-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025); *Pinchi*, 2025 WL 1853763, at *4; *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *6 (N.D. Cal. June 26, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025); *Kuzmenko v. Phillips*, No. 2:25-cv-00663-DJC-AC, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025); *Doe*, 2025 WL 691664, at *8.

II. Mr. Garcia is not in expedited removal proceedings

Contrary to Respondents' assertion, Petitioner is not in expedited removal proceedings. First, he remains in 8 U.S.C. § 1229a removal proceedings, which governs non-expedited removal hearings, pending his appeal. *See* Exh. 1, BIA Filing Receipt for Appeal. Mr. Garcia was paroled into the United States when he first entered on or about September 9, 2022 and thereafter issued a Notice to Appear ("NTA") on February 27, 2023, initiating his 8 U.S.C. § 1229a removal proceedings. *See* Dkt. 10-1, Declaration of Deportation officer Sellenia Z. Romero and Notice to Appear. The Department of Homeland Security ("DHS") chose to forgo the expedited removal process and instead chose to refer Petitioner to removal proceedings under section 240 of the INA,

8 U.S.C. § 1229a. In doing so, the "government vested [Petitioner] with the rights that Congress guaranteed non-citizens in those proceedings. *See Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *9 (W.D.N.Y. July 16, 2025). Being in section 240 proceedings allows Mr. Garcia "the privilege of being represented . . . by counsel of the [noncitizen]'s choosing who is authorized to practice in such proceedings" and "a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence to the [noncitizen]'s own behalf, and to cross-examine witness presented by the Government" 8 U.S.C. § 1229a(b)(4).

On July 23, 2025, the Department of Homeland Security ("DHS") moved to dismiss Mr. Garcia's case and the immigration judge granted the oral motion to dismiss over his objections. Dkt. 1, at ¶ 2; Dkt. 4-2 ¶¶ 3-4. Mr. Garcia reserved appeal and filed his appeal on August 11, 2025. Exh. 1. Under 8 C.F.R. § 1003.38(a), decisions made by IJs "may be appealed to the [BIA]." Mr. Garcia continues to be in 8 U.S.C. § 1229a removal proceedings through his appeal process and cannot be placed into expedited removal proceedings. *See Mata Velasquez*, 2025 WL 1953796, at *9 (explaining that Petitioner's "right to have his appeal heard by the BIA prohibits the initiation of expedited removal proceedings—and therefore mandatory detention under 8 U.S.C. § 1225(b)(1)—before his section 240 proceedings have been allowed to run their procedural course."); *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) ("ICE cannot manipulate the removal proceedings in its favor by substituting expedited proceedings for immigration proceedings already in progress before the immigration court. It is an abuse of process.").

Second, Mr. Garcia was paroled into the United States and therefore, cannot be placed into expedited removal. *See Coalition For Humane Immigrant Rights v. Noem*, No. 25-cv-872 (JMC), 2025 WL 2192986, at *22 (D.D.C. Aug. 1, 2025) (concluding that the statute "forbids the expedited removal of noncitizens who have been, at any point in time, paroled into the United States.").

Third, Mr. Garcia has been physically present in the United States continuously for over two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see also* Dkt. 10-1, Romero Decl. ¶ 6 (alleging Mr. Garcia entered the United States on or about September 9, 2022). Thus, he is ineligible for expedited removal on that basis alone because a noncitizen who can show physical presence in the

"United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" are not subject to expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

III. There is irreparable harm to Petitioner.

Respondents assert that Petitioner has not articulated an irreparable harm that can only be remedied with immediate injunctive relief. Opp. at 5. Respondents merely state that "immigration detention is not an extraordinary part of the removal process." *Id.* Respondents ignore what is at stake for the Petitioner, which is the deprivation of his liberty without due process, where he was suddenly torn apart from his family and indefinitely placed in immigration detention. Respondents do not make any claims that Petitioner is a flight risk or a danger to the community[2], which are the only justified reasons for civil immigration detention. *See Zadvydas*, 533 U.S. at 690.

Petitioner's unlawful detention is irreparable injury of the highest order. Although Respondents passingly contend that "immigration detention is not an extraordinary part of the removal process" Opp. at 5, courts in this Circuit have repeatedly recognized the "irreparable harms imposed on *anyone* subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 796, 995 (9th Cir. 2017) (emphasis added); *see, e.g.*, *Pinchi*, 2025 WL 1853763, at *3; *Ortega*, 2025 WL 1771438, at *5; *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Ca. June 14, 2025); *Lewis v. Garland*, No. EDCV 22-296 JBG (AGRx), 2023 WL 8898601, at *4 (C.D. Cal. July 31, 2023); *Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048, at *9 (E.D. Cal. Sept. 8, 2023). That irreparable harm is compounded when the detention is likely unconstitutional, for "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *United Farm Workers v. Noem*, -- F. Supp. 3d --, 2025 WL 1235525, at *51 (E.D. Cal. Apr. 29, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

Petitioner is likely to succeed on the merits. The Due Process Clause of the Fifth Amendment prohibits governmental deprivation of life, liberty, or property without due process of law. U.S. Const. amend. V. The Due Process Clause protects Mr. Garcia, a person inside the United

[2] Declaration of Deportation Officer Sellenia A. Romero states that Petitioner was arrested on December 23, 2023 by the Contra Costa County Sheriff's Office. Petitioner is submitting a letter from the Contra Costa District Attorney's Office showing that there are no criminal complaints issued against Petitioner from that incident, attached hereto as Exhibit 2.

States from unlawful detention. *See Zadvydas*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the Untied States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."). Petitioner's constitutional right to due process was violated when he was arrested and detained without an opportunity for a pre-deprivation hearing. "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting Wright, Miller & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

CONCLUSION

For the foregoing reasons, and those in Petitioner's TRO motion, this Court should grant Petitioner's TRO Motion and issue the requested relief.

Respectfully submitted,

Date: August 19, 2025

/s/ Jane Lee

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