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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALEXANDER MAURICIO MARTINEZ HERNANDEZ, Petitioner-Plaintiff, v. TONYA ANDREWS, ET AL.,[1] Defendant.	CASE NO. 1:25-CV-01935 OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND HABEAS RESPONSE DATE: August 28, 2025 TIME: 1:30 P.m. COURT: Hon. Jennifer L. Thurston

Petitioner Martinez Hernandez's ("Petitioner") motion for temporary restraining order ("TRO") should be denied because his motion fails to demonstrate a likelihood of success on the merits or entitlement to his requested relief. The United States also submits this brief as response to the habeas petition itself and respectfully requests that the petition be denied on the merits.

I. BACKGROUND

A. Martinez Hernandez Entered the United States Unlawfully.

Petitioner is a native of El Salvador. (Declaration of Deportation Officer Sellenia A. Romero ("Decl.") at ¶ 5, Exhs. 1-2, 4.) While in El Salvador, Petitioner generated a lengthy criminal history,

[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 Golden State Annex Detention Facility in McFarland, California

including an arrest for aggravated murder. (*Id.* at ¶¶ 6-8, Exhs. 12-13.) Authorities in El Salvadro labeled Petitioner as associated with the Mara Salavatrucha gang ("MS-13"). (*Id.* at ¶ 9, Exh. 12.)

Petitioner unlawfully entered the United States at an unknown place on or about April 6, 2021. (Id. at ¶ 10, Exhs. 1,2.) He was subsequently apprehended by U.S. Border Patrol, processed for expedited removal, detained pursuant to Immigration & Nationality Act ("INA") § 235(b), and referred for a credible fear screening. (*Id.*)

On April 17, 2021, Petitioner was initially detained at Adams County Detention Center. (*Id.* at ¶ 11.) On May 3, 2021, Petitioner was served an NTA and placed in removal proceedings. (*Id.* at ¶ 12, Exh. 1.) Petitioner was charged with inadmissibility to the United States for being present in the United States without being admitted or paroled, in violation of Immigration & Nationality Act ("INA") § 212(a)(6)(A)(i), and for being an immigrant who, at the time of application for admission, was not in possession of a valid entry document, in violation of INA § 212(a)(7)(A)(i)(I). (*Id.*)

On May 5, 2021, Petitioner was transferred to Winn Correctional Center. (*Id.* at ¶ 13.)

Petitioner requested and was denied parole on numerous occasions. On May 21, 2021, parole was denied after ERO determined that Petitioner posed a flight risk and danger to the community. (*Id.* at ¶ 13, Exh. 5.) Petitioner again requested parole, and on July 11, 2021, parole was again denied as ERO determined that Petitioner posed a flight risk and danger to the community. (*Id.* at ¶ 13, Exh. 6.) Petitioner again requested parole, and on October 8, 2021, parole was once again denied as ERO determined that Petitioner posed a flight risk and danger to the community. (*Id.* at ¶ 13, Exh. 7.) Petitioner again requested parole, and on October 15, 2021, parole was denied as ERO determined that Petitioner posed a flight risk and danger to the community. (*Id.* at ¶ 13, Exh. 8.)

On October 18, 2021, Petitioner was transferred to Pine Prairie ICE Processing Center. (*Id.* at ¶ 14.) On October 19, 2021, ERO conducted a custody redetermination pursuant to *Fraihat v. ICE*, No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), and ERO determined that Petitioner was to remain detained as he posed a threat to public safety. (*Id.* at ¶ 14, Exh. 9.)

On December 2, 2021, Petitioner was released from ICE custody on an order of recognizance and placed on Alternatives to Detention (ATD), including ankle monitoring. (*Id.* at ¶ 15.)

While on release, Petitioner was arrested for robbery, in violation of California Penal Code

§ 245(a)(21), and battery on a person, in violation of California Penal Code § 242. (*Id.* at ¶ 16, Exh. 11.)

In addition, Petitioner violated the terms of his ATD program on numerous occasions. Indeed, between June 2, 2024, and July 24, 2025, Petitioner violated the terms of the ATD program approximately twenty-eight times, including for missing home and office visits. (*Id.* at ¶ 17, Exh. 14.)

On July 26, 2025, ERO issued a Form I-200, Warrant for Arrest of Alien ("Form I-200"). (*Id.* at ¶ 18, Exh. 15.)

On August 6, 2025, pursuant to the Form I-200, Petitioner was arrested and taken into custody. (*Id.* at ¶ 19, Exh. 16.)[2]

Petitioner continues to be detained and is presently being held at the Golden State Annex Detention Facility in McFarland, California. (Id. at ¶ 20.) His next hearing date in his immigration case is scheduled for a master calendar hearing on October 23, 2025, before the Adelanto Immigration Court. (*Id.*)

II. LEGAL STANDARD

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). A party seeking a preliminary injunction faces a "difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation 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

[2] Petitioner refers on numerous occasions to a head injury he sustained during the arrest, implying this was caused by immigration officials. Respondent contests this. As described in the Declaration of Officer Romero, while being arrested, Petitioner inquired if any of the officers were wearing body cameras, to which the officers replied "no." While in the transport vehicle, Petitioner was observed deliberately banging his head against the cage. After arriving at the ERO office in San Jose, California, Petitioner complained of head pain and dizziness, at which point an ambulance was called to transport Petitioner to the hospital at approximately 11:24 a.m. At approximately 2:15 p.m., Petitioner returned to the ERO office after being discharged from the hospital. Thereafter, he was transported to the ERO office in San Francisco, California, to await final bedspace placement. *See* Decl. at ¶ 10.

F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

The purpose of a TRO is to preserve the status quo and to prevent irreparable harm "just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974). 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 that require affirmative conduct, 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).

III. ARGUMENT

On August 15, 2025, Petitioner filed a Petition for Writ of Habeas Corpus asserting two claims for relief: substantive and procedural due process violations under the Fifth Amendment. ECF 1 ¶¶ 50-59. The habeas petition seeks Petitioner's immediate release from custody, an order prohibiting his transfer outside of this District, an order prohibiting his deportation, and an order prohibiting his re-detention without a hearing to contest that re-detention before a neutral decisionmaker, and an award of costs and reasonable attorney's fees. ECF 1, at 16-17, Prayer for Relief. On August 22, 2025, Petitioner filed this Motion for TRO reiterating his claims and seeking the same relief on an emergent basis. ECF 5.

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A. Petitioner's TRO Should Be Denied Because It Improperly Seeks the Same Relief as Her Habeas Petition.

As a threshold matter, Petitioner's TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits; rather, it improperly seeks the ultimate relief he demands in this case. Compare ECFs 1 and 2. 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. ECFs 1, at ¶ 9 & Prayer for Relief; ECF 5, at 1, 20. 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 these same reasons.

B. Petitioner is Unlikely to Succeed on the Merits

1. Petitioner's Detention Proper and His Due Process Rights Were Not Violated.

Substantively, Petitioner's TRO should be denied because ICE has the statutory and regulatory authority to revoke his release. Petitioner is being detained pursuant to 8 U.S.C. § 1226(a). 8 U.S.C. § 1226(a) & (a)(1) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States . . . and pending such decision, the Attorney General may continue to detain the arrested alien."). While an alien may be released on bond or parole, 8 U.S.C. § 1226(a)(2), the statute provides that the Attorney General "at any time may revoke a bond or parole [and] rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). In light of the above-described violations of his release conditions, ERO lawfully made a custody redetermination and detained petitioner for flight risk and danger. In short, ERO has the necessary statutory and regulatory authority to revoke Petitioner's release. The Court should deny the application

2. Petitioner Seeks Unlawful Relief.

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

3. This Court Does Not Have Jurisdiction to Enjoin Removal.

To the extent the TRO seeks to prevent Petitioner's removal, this Court lacks jurisdiction to do so. The INA explicitly provides that "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). This provision clearly prohibits district courts from exercising injunctive relief to forestall removal via habeas cases. *See Rauda v. Jennings,* 55 F.4th 773 (9th Cir. 2022) (holding that the district court could not enjoin removal via a habeas petition).

C. Petitioner is Not Likely to Suffer Irreparable Harm.

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 extraordinary – rather, it is a statutorily-authorized part of the process. 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. *See Demore v. Kim*, 538 U.S. 510, 523–26 (2003) and *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (generally discussing longstanding administrative arrest procedures in deportation cases). In the INA, 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); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, deportation proceedings "'would be 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)); *see also 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, Petitioner's detention is authorized by the statutes and regulations discussed herein. The mere fact that he is detained does not itself satisfy his burden of proving a likelihood of irreparable injury. 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)). As to any future, unspecified re-arrest, Petitioner cannot establish irreparable harm because neither of those circumstances has materialized

D. The Balance of Equities and the Public Interest.

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

E. If Relief if Granted, the Court Should Require Petitioner to Pose Security.

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

F. Should the Court Order a Bond Hearing, the Burden is on Petitioner.

Should the Court order a bond hearing, Petitioner is mistaken that the burden should be on the government to justify his detention by clear and convincing evidence. ECF 5, at 20. The Constitution does not require the government to bear the burden of establishing that the noncitizen will be a flight

risk or danger—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.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Petitioner's application for a TRO and deny Petitioner's Habeas petition

Dated: August 26, 2025

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By: /s/ SHEA J. KENNY
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