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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MANUEL DE JESUS DIAZ, Petitioner, v. MINGA WOFFORD, ET AL.,[1] Respondents.	CASE NO. 1:25-CV-01079-JLT-EPG **OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND HABEAS RESPONSE** DATE: September 5, 2025 TIME: 9:00 a.m. COURT: Hon. Jennifer L. Thurston

I. INTRODUCTION

Petitioner Manuel De Jesus Diaz's 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.

Petitioner is detained pursuant to his removal proceedings under 8 U.S.C. § 1231(a)(6). The government acknowledges that this Court recently granted injunctions in cases involving other aliens detained following periods of release. *Maklad v. Murray*, No. 1:25-CV-00946-JLT-SAB (E.D. Cal. Aug. 8, 2025); *Castellon v. Kaiser et. al.*, No. 1:25-CV-00968-JLT-EPG (E.D. Cal. Aug. 14, 2025);

[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 in McFarland, California.

Prieto Salazar v. Kaiser et. al., No. 1:25-cv-01017-JLT-SAB (E.D. Cal. Aug. 26, 2025). The Petitioner's case, however, is different because he has previously been removed. Because the Petitioner has a final removal order and has reentered the United States illegally after being previously deported – factors not present in the aforementioned prior cases before this court – the Attorney General has statutory authority to remove the Petitioner from the country at "any time" and the Petitioner is an ineligible asylum beneficiary. 8 U.S.C. § 1231(a)(5).

II. BACKGROUND

A. Petitioner Entered the United States Unlawfully in 2005.

Petitioner is a native of El Salvador who first entered the United States without inspection, admission, or parole by wading the Rio Grande River near the Eagle Pass, Texas Port of Entry on June 11, 2005. Exhibit 1 to Sanchez Decl., at 4. A United States Border Patrol Agent witnessed, detained, and questioned the Petitioner, who admitted to being a citizen of El Salvador illegally present in the United States. *Id.*

On September 23, 2005, the Petitioner was ordered removed from the United States by a final order of removal issued by an immigration judge. Exhibit 2 to Sanchez Decl. On December 5, 2005, pursuant to that final order of removal, the Petitioner voluntary departed the United States. *Id.*

B. Petitioner Entered the United States Unlawfully Again in 2019.

On April 9, 2019, a United States Border Patrol Agent encountered the Petitioner again in the Rio Grande Valley, Texas Border Patrol Sector. Exhibit 1 to Sanchez Decl., at 4. The Border Patrol Agent determined that the Petitioner had crossed from Mexico into the United States at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States. *Id.* The Border Patrol Agent then arrested the Petitioner and brought him to the Rio Grande Valley Sector Centralized Processing Center in McAllen, Texas. *Id.* at 3, 4. There, the Petitioner claimed to be a citizen and national of El Salvador, admitted to crossing the international boundary without inspection by an immigration officer, and admitted to having a prior order of removal. *Id.* at 3. The Petitioner, notably, did not claim to fear persecution or torture if returned to El Salvador, after acknowledging he understood his rights under Article 36(a), (b) of the Vienna Convention of Consular Relations. *Id.* at 3. That same day, the Department of Homeland Security served the Petitioner with a Notice of

Intent/Decision to Reinstate Prior Order of Removal against him. Exhibit 2 to Sanchez Decl.

On April 10, 2019, however, Immigration and Customs Enforcement ("ICE") released the Petitioner on an order of supervision, citing a lack of space to detain the Petitioner and instead paroling the Petitioner to the care of an uncle in San Mateo, CA. Exhibit 3 to Sanchez Decl., at 1, 2. The Petitioner continued residing in the San Francisco Bay Area under the order of supervision, checking in with ICE on an annual basis. *Id.* at 2.

On August 26, 2024, more than five years after illegally arriving in the United States for the second time, the Petitioner applied for derivative asylum status. ECF No. 6, Exhibit D. According to the Petitioner, the asylum application was based on "gang related persecutions." ECF No. 6-1, at 2.

On August 8, 2025, the Department of Homeland Security issued an Order to Detain the Petitioner, citing removal proceedings. Exhibit 4 to Sanchez Decl. That day, the Petitioner arrived at the San Francisco ICE office located at 630 Sansome Street, 5th Floor, San Francisco, CA 94111 for his yearly reporting requirement and was detained pursuant to his reinstated final order of removal. Exhibit 1 to Sanchez Decl., at 3. There are currently no pending immigration court proceedings against the Petitioner. Sanchez Decl. ¶ 7. The Petitioner is *not* in the formally termed Expedited Removal Proceedings pursuant to 8 U.S.C. § 1225 and 8 C.F.R. § 235.3. *Id.* at ¶ 8.

Petitioner continues to be detained and is presently being held at the Golden State Annex in McFarland, California.

III. 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

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).

IV. ARGUMENT

On August 26, 2025, the Petitioner filed a Petition for Writ of Habeas Corpus asserting six claims for relief: substantive and procedural due process violations under the Fifth Amendment, an unlawful arrest violation under the Fourth Amendment, violations of the Administrative Procedure Act. ECF 1 at 15-20. The habeas petition seeks the Petitioner's immediate release from custody, declarations of the violations of his First, Fourth, and Fifth Amendment rights, an order prohibiting his transfer outside of this District, an order prohibiting his deportation, an order prohibiting his re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker, and to award petitioner her costs and reasonable attorneys' fees. ECF 1 at 20-21, Prayer for Relief. On August 27, 2025, Petitioner filed a TRO reiterating his claims and seeking the same relief on an emergent basis. *See generally*, ECF 6. For the reasons below, all of the Petitioner's claims for relief should be denied.

A. Petitioner is Not Likely to Succeed on the Merits Because His Detention Pursuant to His Final Order of Removal is Constitutional and His Due Process Rights Were Not Violated.

Because the Petitioner has illegally reentered the United States after a prior removal, he is removable from this country at any time pursuant to that prior order, meaning his detention and summary removal are constitutional as applied to him. Under 8 U.S.C. § 1231(a)(5), if the Attorney General finds that a previously removed alien has illegally reentered the United States, the prior order of removal "is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry." For aliens like the Petitioner who have illegally re-entered after a prior removal, the statute is unequivocal in the authority of the Attorney General to remove the alien "at any time after the reentry." In *Johnson v. Guzman Chavez*, the Supreme Court held that Congress intended to create an "expedited process for aliens who reenter the United States without authorization after having already been removed" through 8 U.S.C. § 1231(a)(5). 594 U.S. 523, 529-530 (2021).

Furthermore, aliens who effectively admitted all facts necessary to warrant reinstatement of the original removal order cannot show prejudice attributable to the government's use of summary process to reinstate the removal order and therefore cannot raise procedural due process challenges to summary reinstatement. *See Lattab v. Ashcroft*, 384 F.3d 8, 20-21 (1st Cir. 2004) (finding no violation of the Due Process Clause of the Fifth Amendment where the petitioner did not dispute he previously self-deported or reentered the country illegally, thereby "admit[ing] all the facts necessary to warrant reinstatement of the original deportation order"). 8 C.F.R. § 241.8(e) governs the reinstatement of removal orders and outlines the only limitation relevant in the Petitioner's case: if the alien whose prior order of removal is reinstated "expresses a fear of returning to the country designated in that order," the alien must immediately be referred for interview with an asylum officer to evaluate those fears ("withholding-only relief"). This limitation, however, only applies to the country to which the alien can be removed to, and not whether the alien is still subject to removal at any time.

Petitioner's due process rights were not violated. The Petitioner made all the same admissions as the petitioner in *Lattab* who illegally reentered after a prior removal: he admitted that he previously left the United States pursuant to a removal order and he admitted he was in the United States illegally when he was re-encountered in 2019. As with the petitioner in *Lattab*, the Petitioner therefore cannot claim a due process violation from summary reinstatement of his original removal order, which Congress expressly permitted the Attorney General to reinstate at "any time after the reentry." The Supreme Court has also recognized that "detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Accordingly, because the Petitioner already subject to summary removal, detention of the Petitioner to affect that summary removal is also constitutionally sound.

Both the plain text of 8 U.S.C. § 1231(a)(5) and the Supreme Court's interpretation of the statute affirm that Congress intended to empower the Attorney General to effectuate the speedy removal of aliens like the Petitioner who reentered the United States illegally after already having been removed once before. Accordingly, the Petitioner is not likely to succeed on the merits for any of his six claims for relief.

For Petitioner's first claim that his detention is a substantive due process violation of the Fifth

Amendment, he will not succeed on the merits because his detention furthers the government's legitimate goals of expeditiously removing previously removed aliens who have illegally reentered the country, as Congress expressly empowered the Attorney General to do. The purpose of the Petitioner's detention is to effectuate his quick removal. Indeed, the Petitioner's own arguments against what he perceives to be Expedited Removal Proceedings pursuant to 8 U.S.C. § 1225 and 8 C.F.R. § 235.3 confirm that the facilitation of expedited deportation is the purpose of his detention. To be clear, the Petitioner is *not* in the formally designated Expedited Removal Proceedings noted in 8 U.S.C. § 1225 and 8 C.F.R. § 235.3. 8 U.S.C. § 1231(a)(5) empowers his swift and "expedited" removal in more general terms, outside of the formal "Expedited Removal Proceedings."

For his second claim that his detention violates procedural due process under the Fifth Amendment, the Petitioner will also not succeed on the merits. As the First Circuit held in *Lattab*, the Petitioner's status as a previously removed alien who has illegally reentered and with his own admissions as to all the elements necessary to permit summary reinstatement of his removal order mean that summary removal – and by extension deportation to facilitate that removal – is not a violation of procedural due process rights under the Fifth Amendment. Although the Petitioner argues that he should be given the chance to challenge his detention before a neutral adjudicator, he is not entitled to one as someone who was reentered illegally after already once being deported. 8 C.F.R. § 241.8 governing reinstated removal orders goes even further and states that illegal reentrants have "no right to a hearing before an immigration judge in such circumstances" to even contest their substantive deportability. Requiring a detention hearing for illegal reentrants subject to summary removal without an immigration hearing would not be consistent with Congress's desire under 8 U.S.C. § 1231(a)(5) to make illegal reentrants expeditiously deportable.

The Petitioner's third claim of relief for unlawful arrest will also not succeed on the merits for the same reasons his second claim for relief will fail, specifically that he has admitted all that was necessary for him to be subject to summary removal. The Petitioner primarily relies on *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1196 (N.D. Cal. 2017), but this case is inapposite. *Saravia* did not involve an illegal reentrant like Petitioner. While the district court held that, in the case of the unaccompanied minor in *Saravia*, re-arrest solely on being subject to removal proceedings was

insufficient, that court did not address the authority to summarily remove illegal reentrants under 8 U.S.C. § 1231(a)(5). The Petitioner's prior immigration violations place him in a different situation – and different section of Title 8 – than the aliens in the cases he cites.

The Petitioner's fourth claim for relief alleging a violation of the Administrative Procedure Act will not succeed on the merits, as the expedited removal the Attorney General is facilitating with the Petitioner is expressly permitted by statute. While the decision to detain and remove the Petitioner after several years on supervised parole may appear to him arbitrary and capricious, it is consistent with the plain text of the statute empowering precisely this discretion. Once again, this discretionary authority was specifically conferred by Congress to swiftly remove illegal reentrants.

The Petitioner's fifth claim for relief alleging a violation of the Administrative Procedure Act will not succeed on the merits, as he is not in the Expedited Removal Proceedings as described in 8 U.S.C. § 1225(b)(1). He is being removed pursuant to 8 U.S.C. § 1231(a)(5), which has no such limitations based on the illegal reentrants time spent in the United States before removal.

The Petitioner's sixth claim for relief alleging a violation of the procedural due process protections of the Fifth Amendment will also not succeed on the merits. Because of the Petitioner's status as an alien illegally in the United States after being previously removed, he is not entitled to any deportation proceedings or dispositional hearing. The Attorney General is expressly permitted to remove the Petitioner on a summary basis. The only relief that the Petitioner is entitled to is being withheld from removal to a specific country where he fears persecution or torture. Pursuant to 8 C.F.R. § 241.8(e), this happens during an interview with an asylum officer and only during such an interview – not before any immigration court.

None of Petitioner's constitutional or due process rights were violated and his TRO should be denied.

D. The 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 purported constitutional claim is "too tenuous" to support an injunction. *Goldie's Bookstore*, 739 F.2d at 472.

To the extent that the Petitioner argues he could incur an irreparable harm related to his application for asylum, the pending application would not serve as such a harm because the Petitioner was never permitted to apply for asylum. 8 U.S.C. § 1231(a)(5) expressly states that illegal reentrants are "not eligible and may not apply for any relief under this chapter." Even if Petitioner had been an illegal reentrant, his application for asylum was due within one year of his entry into the United States, meaning it was due in April 2020. *See* 8 C.F.R. 208.4(a)(2).

E. Petitioner Qualifies for Summary Removal Pursuant to the Reinstatement of his Prior Removal Order

Petitioner's TRO fails because the Attorney General has been specifically empowered by Congress to facilitate the summary removal of aliens in the Petitioner's exact position: those who have illegally reentered the United States after having been previously removed. Although the Petitioner may not have had a formal Notice of Intent to Reinstate Prior Removal Order handed to him upon his arrest, one was furnished to him in 2019 and the Attorney General may furnish one upon him at "any time," consistent with 8 U.S.C. § 1231(a)(5).

Petitioner argues that as an alien on parole in the United States for more than two years, the Attorney General is required to give him notice and a hearing before removing him and cannot apply expedited removal under 8 U.S.C. § 1225(b)(1). These arguments are beside the point, however, that under 8 U.S.C. § 1231(a)(5), the Petitioner has been subject to summary removal pursuant to the reinstatement of his prior removal order since his illegal reentry in 2019. That prior removal order renders him amenable to summary removal today.

Because the Petitioner was here illegally after having been previously removed, and made sufficient admissions confirming so, he is subject to summary removal.

F. 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, given Petitioner's detention in advance of summary removal under 8 U.S.C. § 1231(a)(5) is consistent with the Supreme Court's ruling in *Johnson*, that Congress intended to give the Attorney General the discretionary authority to expeditiously remove aliens who had illegally reentered the United States after being previously removed before.

V. 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: September 2, 2025

ERIC GRANT
United States Attorney

By: /s/ CALVIN LEE
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