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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 MARTIN PAUL PRIOR,

12 Petitioner,

13 v.

14 TONYA ANDREWS, et al.;

15 Respondents.  
16

CASE NO. 1:25-cv-01131-JLT-EPG

**OPPOSITION TO MOTION FOR  
TEMPORARY RESTRAINING ORDER**

17 **INTRODUCTION**

18 Respondents oppose Petitioner's motion for a temporary restraining order ("TRO"). (ECF No.  
19 3). Petitioner is mandatorily detained during removal proceedings pursuant to 8 U.S.C. § 1226(c). The  
20 removal proceedings remain pending before the Board of Immigration Appeals ("BIA"). At the BIA,  
21 Petitioner has raised the same arguments brought in his TRO motion and his underlying petition for a  
22 writ of habeas corpus. (ECF No. 1). Petitioner provides insufficient justification for intervention by this  
23 Court while the same matters are awaiting a determination by the BIA. Respondents, therefore, request  
24 that the Court deny Petitioner's motion for a TRO.

25 **FACTUAL BACKGROUND**

26 Petitioner is a citizen of the United Kingdom and a lawful permanent resident of the United  
27 States. Decl. of Deportation Officer Patrick Cruz ("Cruz Decl.") ¶¶ 5-6. The U.S. Department of  
28 Homeland Security ("DHS") initiated removal proceedings against Petitioner on February 24, 2020,

1 charging him with inadmissibility pursuant to 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and (II). *See Cruz Decl.* ¶  
2 7. On January 18, 2023, an immigration judge found Petitioner removable from the United States. *Id.* ¶  
3 8.

4 On April 25, 2023, Petitioner filed an application for immigration relief, i.e., an application for  
5 cancellation of removal. *See id.* ¶ 9. The immigration judge granted Petitioner’s application for relief on  
6 April 29, 2025. *Id.* ¶ 15. On May 22, 2025, DHS filed an appeal of the decision with the Board of  
7 Immigration Appeals (“BIA”). *Id.* ¶ 16. DHS filed a request to stay the briefing schedule on July 7,  
8 2025, because no certified transcript of a merits hearing held on April 18 had been made available to the  
9 parties. *Id.* ¶ 18. Petitioner filed a statement of non-opposition to the request, and he also requested that  
10 the transcript be produced. *Id.* ¶ 19. The matter remains pending before the BIA.<sup>1</sup>

11 On August 29, 2025, Petitioner filed with the BIA a motion to terminate his removal  
12 proceedings. *Id.* ¶ 20. DHS filed an opposition to the motion on September 9, 2025. *Id.* The motion also  
13 remains pending before the BIA. *See id.* ¶ 21.

14 On September 5, 2025, Petitioner filed a petition for a writ of habeas corpus with this Court,  
15 seeking release from immigration detention and a prohibition against his re-arrest without a hearing  
16 before a neutral decisionmaker. (ECF No. 1.) On the same date, Petitioner filed a motion for a TRO, in  
17 which he also seeks release from immigration detention and a prohibition against his re-arrest without a  
18 hearing. (ECF No. 3.) On September 8, 2025, the Court ordered Respondents to show cause in writing  
19 why Petitioner’s TRO motion should not be granted. (ECF No. 6.)

## 20 LEGAL ARGUMENT

### 21 A. Standard for Temporary Restraining Order

22 Temporary restraining orders are governed by the same standard applicable to preliminary  
23 injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111,  
24 1126 (E.D. Cal. 2001). Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def.*  
25 *Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “[P]laintiffs seeking a preliminary injunction  
26 face a difficult task in proving that they are entitled to this extraordinary remedy.” *Earth Island Inst. v.*

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28 <sup>1</sup> Given the stay request by DHS and Petitioner’s statement of non-opposition, the BIA has not found that DHS has missed the deadline to file a brief.

1 *Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). A plaintiff’s burden is aptly  
2 described as “heavy.” *Id.* A preliminary injunction requires “substantial proof” and a “clear showing.”  
3 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted). “A plaintiff seeking a preliminary  
4 injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable  
5 harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an  
6 injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal  
7 quotation omitted). Alternatively, a plaintiff can show “serious questions going to the merits and the  
8 balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are  
9 satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

10 As the purpose of preliminary injunctive relief is to preserve the status quo pending final  
11 adjudication on the merits, there is “heightened scrutiny” for mandatory preliminary injunctions, which  
12 is what Petitioner seeks here.<sup>2</sup> *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). Where “a  
13 party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*,  
14 courts should be extremely cautious about issuing a preliminary injunction.” *Martin v. International*  
15 *Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee of Cent. American Refugees*  
16 *v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1442 (9th Cir. 1986).

### 17 **B. Petitioner’s TRO Motion Should be Denied**

18 The detention of a noncitizen pending removal proceedings is governed by 8 U.S.C. 1226. *See*  
19 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). Under section 1226(a), the “Attorney  
20 General may issue a warrant for the arrest and detention of an alien ‘pending a decision on whether the  
21 alien is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)  
22 (citation omitted). In general, “the Attorney General ‘may release’ an alien detained under section  
23 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.* (citation omitted).

24 However, “[s]ection 1226(c) ... carves out a statutory category of aliens who may *not* be  
25 released.” *Id.* at 289 (emphasis in original). Under this subsection, “the ‘Attorney General shall take into  
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27 <sup>2</sup> “A mandatory injunction orders a responsible party to take action, while [a] prohibitory injunction prohibits a  
28 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) (internal quotation omitted).

1 custody any alien’ who falls into one of several enumerated categories involving criminal offenses ...  
2 The Attorney General may release aliens in those categories ‘only if the Attorney General decides ...  
3 that release of the alien from custody is necessary’ for witness-protection purposes and ‘the alien  
4 satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of  
5 property and is likely to appear for any scheduled proceeding.’” *Id.* (citations omitted).

6 Consequently, the detention of noncitizens “within [the] scope” of section 1226(c) “*must*  
7 continue ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Id.*  
8 (citation omitted) (emphasis in original); *see also Avilez v. Garland*, 69 F.4th 525, 535 (9th Cir. 2023)  
9 (concluding that section 1226(c) “applies throughout the administrative and judicial phases of removal  
10 proceedings”). The subsection does not “limit the length of the detention it authorizes.” *Jennings*, 583  
11 U.S. at 303. In fact, “in *Demore v. Kim*, the Supreme Court rejected a due process challenge to  
12 mandatory detention under Subsection C on the ground that the detention authorized by Subsection C is  
13 relatively short-lived.” *Avilez*, 69 F.4th at 536 (citing *Demore v. Kim*, 538 U.S. 510, 529 (2003)). The  
14 Court distinguished section 1226(c) from section 1231(a)(6) (which governs detention following the  
15 entry of a final order of removal) “by pointing out that detention under [the former] has ‘a definite  
16 termination point’: the conclusion of removal proceedings.” *Jennings*, 583 U.S. at 304 (quoting *Demore*,  
17 538 U.S. at 529).

18 A person “who believes that he is not covered by § 1226(c) may ... ask for what is known as a  
19 ‘Joseph hearing’” from the immigration court. *Jennings*, 583 U.S. at 289 n.1 (citing *Matter of Joseph*, 22  
20 I. & N. Dec. 799 (BIA 1999)). At such a hearing, “the detainee may avoid mandatory detention by  
21 demonstrating that he is not an alien, was not convicted of the predicate crime, or that the [government]  
22 is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention.”  
23 *Demore*, 538 U.S. at 514 n.3 (2003).

24 Here, Petitioner has not requested a *Joseph* hearing. He has, however, filed a motion to terminate  
25 his removal proceedings with the BIA, on the grounds that he is no longer inadmissible due to the  
26 vacatur of his state criminal convictions. *See Cruz Decl.* ¶ 20. DHS has filed an opposition to the  
27 motion, *id.*, on the grounds that although the convictions have been vacated, the evidence provided in  
28 support of the motion does not establish that the state court vacated the convictions on the basis of

1 “procedural or substantive defect in the underlying criminal proceedings” (as opposed to “reasons  
2 unrelated to the merits of the underlying criminal proceedings”), which is required in order to eliminate  
3 the convictions for immigration purposes. *In Re Pickering*, 23 I. & N. Dec. 621, 624 (BIA 2003). Both  
4 Petitioner and DHS await the BIA’s ruling on the motion.<sup>3</sup> See Cruz Decl. ¶ 21.

5 In sum, the arguments raised by Petitioner in this action are actively proceeding through the  
6 immigration court system. Pursuant to section 1226(c), unless and until the BIA rules on Petitioner’s  
7 pending matters, Petitioner is subject to mandatory detention. In other words, the “conclusion of  
8 [Petitioner’s] removal proceedings” provides the “termination point” of the statutorily-required  
9 detention. *Jennings*, 583 U.S. at 304

### 10 CONCLUSION

11 For the reasons set forth above, Respondents respectfully request that the Court deny Petitioner’s  
12 motion.

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14 Dated: September 10, 2025

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United States Attorney

15  
16 /s/ Robert A. Fuentes  
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28 <sup>3</sup> Petitioner and DHS also await the BIA’s ruling on DHS’ appeal of the April 29, 2025 granting of Petitioner’s  
application for cancellation of removal. See Cruz Decl. ¶¶ 15-19, 21.