

District Judge John H. Chun
Magistrate Judge Michelle L. Peterson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RIGOBERTO HERNANDEZ HERNANDEZ,

Petitioner,

v.

U.S. BORDER PATROL, *et al.*,

Respondents.

Case No. 2:25-cv-01821-JHC-MLP

RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER

Noted for Consideration:
September 15, 2025

I. INTRODUCTION

Petitioner Rigoberto Hernandez Hernandez's motion for a temporary restraining order ("TRO") should be denied. Dkt. No. 2, TRO Mot. In the motion, Hernandez seeks his release from U.S. Immigration and Customs Enforcement ("ICE") custody. This request for relief is moot. Earlier today, U.S. Department of Homeland Security ("DHS") filed a motion to dismiss Hernandez's removal proceedings. In addition, ICE is voluntarily releasing Hernandez from detention today. As a result, Hernandez cannot demonstrate that he meets any of the factors required for the extraordinary remedy of a temporary restraining order. Therefore, the TRO motion should be denied.

1 **II. RELEVANT FACTS**

2 Petitioner Rigoberto Hernandez Hernandez is a noncitizen who entered the United States
3 without inspection or parole at an unknown place on an unknown date. Dkt. No. 3-1, Notice to
4 Appear. Border Patrol Agents arrested Hernandez on August 27, 2025. TRO Mot., at 9. Border
5 Patrol served him with a Notice to Appear the following day. Dkt. No. 3-1, Notice to Appear, at
6 2. He was transferred to ICE custody at the Northwest Immigration Processing Center
7 (“NWIPC”) that same day. TRO Mot., at 12.

8 On September 23, 2025, DHS electronically filed a motion to dismiss Hernandez’s
9 removal proceedings without prejudice with the immigration court. Lambert Decl., Ex. A, DHS
10 Motion to Dismiss Without Prejudice. ICE will release Hernandez from detention today.¹
11 Hubbard Decl., ¶ 5.

12 **III. LEGAL STANDARD**

13 The standard for issuing a temporary restraining order is “substantially identical” to the
14 standard for issuing a preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*,
15 240 F.3d 832, 839 n.7 (9th Cir. 2001). “It frequently is observed that a preliminary injunction is
16 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*
17 *showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
18 (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*,
19 555 U.S. 7, 22 (2008). The purpose of preliminary injunctive relief is to preserve the status quo
20 pending final judgment, and not to obtain a preliminary adjudication on the merits. *Sierra On-*
21 *Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

22 “A party can obtain a preliminary injunction by showing that (1) [he] is ‘likely to succeed
23 on the merits,’ (2) [he] is ‘likely to suffer irreparable harm in the absence of preliminary relief,’

24 ¹ Respondents will notify the Court after Hernandez has been released.

1 (3) ‘the balance of equities tips in [his] favor,’ and (4) ‘an injunction is in the public interest.’”
2 *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter*, 555
3 U.S. at 20). Alternatively, a plaintiff can show that there are “serious questions going to the
4 merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and
5 third *Winter* factors are satisfied.” *Id.* (internal quotation omitted).

6 IV. ARGUMENT

7 The Court should deny Hernandez’s request for a TRO because he has failed to
8 demonstrate (1) that he will suffer imminent irreparable harm that may only be remedied with
9 immediate injunctive relief or (2) that he will be successful on the merits of his either of his
10 claims.

11 A. Hernandez is unlikely to succeed on the merits.

12 Likelihood of success on the merits is a threshold issue: “[W]hen a plaintiff has failed to
13 show the likelihood of success on the merits, [the court] need not consider the remaining three
14 *Winters* elements.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation
15 omitted). To succeed on a habeas petition, a petitioner must show that he is “in custody in
16 violation of the Constitution or laws or treaties of the United States.” *See* 28 U.S.C. § 2241.

17 Hernandez cannot succeed on his detention claims as ICE is voluntarily releasing him. In
18 the motion, he claims that he is likely to succeed on Claims Eleven (violation of detention
19 authority statutes) and Twelve (due process challenge to his mandatory detention). TRO Mot., at
20 20-22. For a federal court to have jurisdiction, “an actual controversy must exist at all stages of
21 the litigation.” *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9th Cir. 2002).
22 Now that Hernandez is being released from ICE custody, Claims Eleven and Twelve are
23 undoubtedly moot. *See Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007) (petitioner’s release
24 from custody rendered habeas claim moot).

1 While Hernandez also raises claims which involve allegations concerning circumstances
2 before his arrest and detention, *see* TRO Mot., at 14-20, those claims are not appropriate for
3 resolution through a habeas petition, especially once Hernandez is no longer detained. The
4 habeas statute allows a petitioner who is “in custody” to challenge that custody on various
5 grounds, 28 U.S.C. §2241(c), including that “[h]e is in custody in violation of the Constitution or
6 laws or treaties of the United States.” 28 U.S.C. §2241(c)(3). The statute is written in the
7 present tense, making clear that Section 2241 only allows a petitioner to challenge his current
8 custody, not his past custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“the essence
9 of habeas corpus is an attack by a person *in custody* upon the legality of *that custody*” (emphasis
10 added)). And as described above, as he is being released from custody, the issue of his current
11 custody is moot.

12 Regardless of whether Hernandez’s remaining claims proceed forward in this action, they
13 should be addressed through briefing on the underlying habeas petition, not through a TRO
14 motion.

15 **B. Hernandez cannot demonstrate that he will likely suffer irreparable harm in the**
16 **absence of a TRO.**

17 Hernandez has not demonstrated that he will suffer irreparable injury absent the
18 emergency injunctive relief he seeks. To do so, he must demonstrate “immediate threatened
19 injury.” *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)
20 (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d
21 1197, 1201 (9th Cir.1980)). Merely showing a “possibility” of irreparable harm is insufficient.
22 *See Winter*, 555 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of
23 irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief
24 as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is

1 entitled to such relief.” *Winter*, 555 U.S. at 22.

2 Hernandez alleges that he “has suffered will likely continue to suffer irreparable harm.”
3 TRO Mot.,at 22. Specifically, he points to his detention and possible transfer to another facility
4 “far away from his lawyers, his family, and is support system.” *Id.* But as he is being released
5 from ICE custody, all of these allegations are moot and he cannot demonstrate an immediate
6 threatened injury requiring this Court’s intervention.

7 **V. CONCLUSION**

8 DHS has voluntarily moved to dismiss Hernandez’s removal proceedings as well as
9 release him from detention. Accordingly, he has not satisfied his high burden of establishing
10 entitlement to injunctive relief, and his Motion should be denied.

11 DATED this 23rd day of September, 2025.

12 Respectfully submitted,

13 TEAL LUTHY MILLER
14 Acting United States Attorney

15 *s/ Michelle R. Lambert*

16 MICHELLE R. LAMBERT, NYS #4666657
17 Assistant United States Attorney
18 United States Attorney’s Office
19 Western District of Washington
20 1201 Pacific Ave., Ste. 700
21 Tacoma, WA 98402
22 Phone: (253) 428-3824
23 Fax: (253) 428-3826
24 Email: michelle.lambert@usdoj.gov

Attorneys for Respondents

I certify that this memorandum contains 1,153 words, in compliance with the Local Civil Rules.