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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 Edy Noe Baten Perez,

17 Petitioner,

18 v.

19 John Cantu, Immigration and Customs  
20 Enforcement Phoenix Field Office Director  
21 *et al.*,

22 Respondents.

Case No. 2:25-cv-03854-SMB (MTM)

**RESPONSE TO PETITIONER'S  
EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

**I. INTRODUCTION.**

23 Respondents, John Cantu, Arizona Field Office Director, U.S. Immigration and  
24 Customs Enforcement (ICE), Kristi Noem, Secretary of Homeland Security (DHS),  
25 Pamela Bondi, Attorney General of the United States, Fred Figueroa, Warden of Eloy  
26 Detention Center and Todd Lyons, Acting Director of ICE, by and through counsel, hereby  
27 respond to the Emergency Motion for Temporary Restraining Order (TRO). Doc. 2.  
28 Petitioner is an "applicant for admission" who must therefore be detained pending removal  
proceedings. The plain language of the Immigration and Nationality Act (INA) establishes  
that any noncitizen present in the United States without being admitted is indeed an

1 “applicant for admission” and therefore subject to mandatory detention under 8 U.S.C. §  
2 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§  
3 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain  
4 proceedings have concluded.”). Accordingly, pursuant to the INA, Petitioner is properly  
5 subject to mandatory detention during the pendency of his removal proceedings and the  
6 Court should deny the Emergency Motion for TRO.

## 7 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

8 Petitioner Edy Noe Baten Perez is a native and citizen of Guatemala. *See*  
9 Declaration of Jonathan Montelongo-Zubiate, Deportation Officer, attached as Exhibit A,  
10 at ¶ 3. On April 11, 2006, Petitioner was encountered by U.S Border Patrol (USBP) and  
11 was granted a Voluntary Return to Mexico, which USBP Agents witnessed. *Id.* at ¶ 4. He  
12 reentered the United States on an unknown date, at an unknown location, without being  
13 admitted or paroled by an Immigration Officer. *Id.* at 5.

14 On February 8, 2017, ICE ERO Washington Field Office Fugitive Operations Team,  
15 arrested Petitioner. He was questioned by Field Office Fugitive Team officers who  
16 established alienage and removability through field interview. Petitioner was taken into  
17 custody without incident. *Id.* at ¶ 6. On the same date, ICE served Petitioner with a Notice  
18 to Appear (NTA) charging him with violating Section 212(a)(6)(A)(i) of the INA, as an  
19 alien present in the United States without being admitted or paroled or who arrived in the  
20 United States at any time or place other than as designated by the Attorney General. *Id.* at  
21 ¶ 7. On February 8, 2017, the Washington Field Office released Petitioner on bond. *Id.* at  
22 ¶ 8.

23 On July 27, 2017, Petitioner was ordered removed from the United States by an  
24 Immigration Judge. *Id.* at ¶ 9. On January 21, 2021, Petitioner filed a motion to reopen his  
25 immigration case, which the immigration court in Arlington, Virginia granted. *Id.* at ¶ 10.  
26 On February 13, 2024, Petitioner’s immigration case was administratively closed by the  
27 Annandale Immigration Court. *Id.* at ¶ 11.

28 On July 16, 2025, ICE’s Office of the Principal Legal Advisor (OPLA) filed a

1 motion to re-calendar Petitioner's immigration case. *Id.* at ¶ 12. On July 28, 2025, Special  
2 Agents with DHS's Homeland Security Investigations (HSI) encountered Petitioner at the  
3 Alleghany County Jail. He was arrested by police in Cumberland, Maryland during a traffic  
4 stop. HSI Special Agents contacted a Deportation Officer and conducted immigration  
5 related record checks. Petitioner was subsequently taken into custody to await his  
6 appearance before an Immigration Judge. *Id.* at ¶ 13. After several transfers, Petitioner  
7 arrived at the Florence Staging Facility, in Florence, Arizona on July 30, 2025. *Id.* at ¶ 16.  
8 On July 30, 2025, an attorney submitted a bond request to the Executive Office for  
9 Immigration Review in Florence, Arizona, but it was rejected. *Id.* at ¶ 17. On July 31, 2025,  
10 ICE transferred Petitioner to the Eloy Detention Center, in Eloy, Arizona. *Id.* at ¶ 18. On  
11 July 31, 2025, the Immigration Court scheduled a custody redetermination hearing for  
12 Petitioner for August 6, 2025. *Id.* at ¶ 19.

13 On August 3, 2025, a change of venue form (Form I-830) was completed by an  
14 officer at the Eloy Detention Center. *Id.* at ¶ 20. On August 6, 2025, the Immigration Judge  
15 in Florence, Arizona denied Petitioner's motion for custody redetermination, finding that  
16 the Immigration Court did not have jurisdiction, as Petitioner was an applicant for  
17 admission. *Id.* at ¶ 21. On August 7, 2025, OPLA advised a Deportation Officer at the Eloy  
18 Detention Center to file the change of venue form (Form-I-830) with the Washington EOIR  
19 to complete the transfer of the case to Eloy. That request is currently pending. *Id.* at ¶ 22.

20 Petitioner filed this Petition for Writ of Habeas Corpus on October 16, 2025, Doc.  
21 1, along with an Emergency Motion for a Temporary Restraining Order. Doc. 2. On  
22 October 17, 2025, the Court directed the Respondents to respond to Petitioner's Emergency  
23 Motion for Temporary Restraining Order by October 31, 2025, and Petition for Writ of  
24 Habeas Corpus by November 6, 2025. Doc. 5. Petitioner claims that his detention under 8  
25 U.S.C. § 1225(b)(2)(A) violates the INA, federal regulations and his substantive and  
26 procedural due process rights. Doc. 1. Respondents deny all claims, including his request  
27 for a bond hearing or release.

28

1 **III. LEGAL FRAMEWORK FOR TEMPORARY RESTRAINING ORDERS**  
2 **AND PRELIMINARY INJUNCTIONS**

3 The substantive standard for issuing a temporary restraining order is identical to the  
4 standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D.*  
5 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable  
6 discretion and is “an extraordinary remedy that may only be awarded upon a clear showing  
7 that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.  
8 7, 22 (2008). Preliminary injunctions are “never awarded as of right.” *Id.* at 24.

9 Preliminary injunctions are intended to preserve the relative positions of the parties  
10 until a trial on the merits can be held, “preventing the irreparable loss of a right or  
11 judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.  
12 1984). Preliminary injunctions are “not a preliminary adjudication on the merits.” *Id.* A  
13 court should not grant a preliminary injunction unless the applicant shows: (1) a strong  
14 likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable  
15 injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4)  
16 the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,  
17 a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.*  
18 at 22.

19 Where the government is a party, courts merge the analysis of the final two *Winter*  
20 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,  
21 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).  
22 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’  
23 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and  
24 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d  
25 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-  
26 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in  
27 proving that they are entitled to this ‘extraordinary remedy.’” *Earth Island Inst. v. Carlton*,  
28 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s burden is a “heavy” one. *Id.*

1 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a  
2 party from taking action and preserves the status quo pending a determination of the action  
3 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,  
4 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party to  
5 take action. . . . A mandatory injunction goes well beyond simply maintaining the status  
6 quo pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory  
7 injunction is “subject to a higher degree of scrutiny because such relief is particularly  
8 disfavored under the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313,  
9 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be  
10 “extremely cautious” when issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740  
11 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied “unless  
12 extreme or very serious damage will result,” and even then, not in “doubtful cases.” *Marlyn*  
13 *Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of*  
14 *Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740  
15 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts  
16 and law clearly favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

17 **IV. PETITIONER CANNOT ESTABLISH A LIKELIHOOD OF SUCCESS ON**  
18 **THE MERITS OF HIS CLAIMS.**

19 For the reasons set forth in the Response to Petition for Writ of Habeas Corpus  
20 Pursuant to 28 U.S.C. § 2241 (Doc. 7), Petitioner cannot establish a likelihood of success  
21 on the merits of his habeas petition because he is subject to mandatory detention as an  
22 inadmissible alien under 8 U.S.C. § 1225(b)(2).

23 **V. PETITIONER CANNOT ESTABLISH IRREPARABLE HARM.**

24 Petitioner cannot show that denying the temporary restraining order would make  
25 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]  
26 demonstrate that irreparable injury is likely in the absence of an injunction.”) (emphasis in  
27 original). “[A] preliminary injunction will not be issued simply to prevent the possibility  
28 of some remote future injury.” *Id.* “Speculative injury does not constitute irreparable  
injury.” *Goldie’s Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th



1 Cir. 1984). Petitioner has not established he will suffer irreparable harm if he is not released  
2 from detention where he is lawfully detained under 8 U.S.C. § 1225(b)(2) and subject to  
3 mandatory detention.

4 **V. THE EQUITIES AND PUBLIC INTEREST DO NOT FAVOR PETITIONER.**

5 The third and fourth factors, “harm to the opposing party” and the “public interest,”  
6 “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “In exercising  
7 their sound discretion, courts of equity should pay particular regard for the public  
8 consequences in employing the extraordinary remedy of injunction.” *Weinberger v.*  
9 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

10 An adverse decision here would negatively impact the public interest by  
11 jeopardizing “the orderly and efficient administration of this country’s immigration laws.”  
12 *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ.*  
13 *Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers  
14 irreparable injury whenever an enactment of its people or their representatives is  
15 enjoined.”). The public has a legitimate interest in the government’s enforcement of its  
16 laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he  
17 district court should give due weight to the serious consideration of the public interest in  
18 this case that has already been undertaken by the responsible state officials in Washington,  
19 who unanimously passed the rules that are the subject of this appeal.”).

20 **VI. CONCLUSION.**

21 Every habeas corpus petition necessarily alleges the same basic ground for relief,  
22 i.e., that the petitioner is detained in violation of the Constitution, laws or treaties of the  
23 United States. *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that  
24 exceptional circumstances require immediate review of a petitioner’s claims will  
25 consideration of his petition be advanced at the expense of prior, pending petitions. Upon  
26 the current record, it is not plain that the merits of Petitioner’s claims are so strong as to  
27 warrant expedited adjudication and Petitioner is not likely to succeed on the merits of his  
28 claim. *See In re Roe*, 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of

1 whether a district court has the authority to release a prisoner pending resolution of a habeas  
2 case, but holding that if such authority does exist, it can only be exercised in an  
3 “extraordinary case involving special circumstances”). Accordingly, Petitioner’s Motion  
4 for Temporary Restraining Order should be denied.

5 RESPECTFULLY SUBMITTED October 31, 2025.

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