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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

L.A.E., Petitioner, v. **CAMMILLA WAMSLEY; TODD LYONS; KRISTI NOEM; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF HOMELAND SECURITY,** Respondents,	**Case No. 3:25-cv-01975-AN** **RESPONDENTS' RESPONSE TO THE PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER**

Respondents Cammilla Wamsley, Todd Lyons, Kristi Noem, U.S. Immigration and Customs Enforcement ("ICE"), and U.S. Department of Homeland Security ("DHS") respond to Petitioner's Section 2241 petition and motion for temporary restraining order ("TRO"). ECF 1 (Petition); ECF 2

(Motion). Petitioner seeks an order to end his detention and return him to Oregon. This Court should deny this relief.

I. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico who has two prior apprehensions and voluntary returns to Mexico in April 1999. *See* Declaration of Enrique Rodriguez ("Rodriguez Decl."), filed in this case, at ¶¶ 3-4. Petitioner was arrested by ICE in April 2013 after incurring Oregon state court convictions for Driving Under the Influence of Intoxicants and Reckless Driving. Rodriguez Decl. at ¶ 5. He was personally served that day with a Notice to Appear, charging him with inadmissibility under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"). *Id.* Under the statute, an "alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." He was transferred to the Northwest ICE Process Center (NWIPC) in Tacoma, Washington, where removal proceedings began. *Id.*

An Immigration Judge held a bond hearing on May 1, 2013 and granted Petitioner a $9,000 bond. *Id.* at ¶ 6. He bonded out the following day; removal proceedings were changed to the Portland Immigration Court. *Id.*

Petitioner was represented by counsel at an individual bond hearing on September 13, 2018. *Id.* at ¶ 7. At that hearing, the Immigration Judge

denied Petitioner's application for cancellation of removal for non-lawful permanent residents under INA § 240A(b) and ordered Petitioner removed to Mexico. *Id.* at ¶ 7.

The judge's decision reflects that Petitioner was convicted of Driving Under the Influence in 2005. *Id.* The decision also reveals that Petitioner admitted that possessed methamphetamine at the time of his 2013 arrest on the other DUI case; however, charges for possessing that methamphetamine were dismissed. *Id.*

The Board of Immigration Appeals denied Petitioner's appeal of removal on August 5, 2021. *Id.* at ¶ 8.

Petitioner filed a timely Petition for Review and Motion for Stay of Removal with the United States Court of Appeals for the Ninth Circuit. *Id.* at ¶ 9. A stay of removal immediately took effect. *Id.*

On March 3, 2022, Petitioner's Ninth Circuit case was administratively closed by agreement of the parties. *Id.* at ¶ 10. Respondents believe this was done as an act of prosecutorial discretion based on ICE's prior immigration enforcement priorities, which have since been rescinded. *Id.*

On September 23, 2025, the Office of Immigration Litigation (OIL) moved to reopen the Ninth Circuit proceedings. *Id.* at ¶ 11.

On October 24, 2025, Petitioner was arrested by U.S. Customs and Border Protection (CBP) Office of Field Operations Special Response Team

(OFO SRT). *Id.* at ¶ 12. According to I-213 arrest report, OFO SRT members were conducting surveillance near SE 192nd Avenue in Portland, Oregon. Officers spotted Petitioner, whose appearance is similar to the person whom officers were targeting for arrest at that location. *Id.*

Officers conducted a traffic stop of Petitioner to confirm his identity. *Id.* They determined that he was not the person whose arrest they had been planning, but also realized that he had failed to update his address with ICE after bonding out of custody, as required by INA § 265(a). *Id.* Officers also realized Petitioner had a history of criminal convictions. *Id.* They arrested Petitioner based on his criminal history and failure to update his address as required by law. *Id.*

His bond was cancelled and he was transported to the Northwest ICE Processing Center in Tacoma, Washington. *Id.* at ¶ 13. He remains detained there. *Id.* Due to changes in the law since Petitioner's release from custody in 2013, he is now detained under INA § 235(b). *Id.* at ¶ 15.

On October 24, 2025, Petitioner's counsel filed a petition for writ of habeas corpus challenging his confinement under 28 U.S.C. § 2241. ECF 1. Counsel also filed a motion for a TRO. ECF 2. Later that day, Petitioner left the State of Oregon in ICE custody at approximately 3:14 pm. ECF 6.

Petitioner has not requested a bond hearing with the Tacoma immigration court. *Id.* ¶ 14.

II. LEGAL AND REGULATORY BACKGROUND

A. The Constitution and Federal Statutes Confer Broad Powers on the Executive Branch to Administer the Immigration System

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The primary immigration statute, the Immigration and Nationality Act ("INA"), provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. Among those powers, the President, through the Department of State and the Department of Homeland Security (DHS), decides which noncitizens may enter and remain in the country. *See* 8 U.S.C. §§ 1103, 1104.

Under the INA, if an applicant for admission seeks admission to the United States without a valid entry document, DHS may charge the noncitizen as inadmissible and initiate removal proceedings against the noncitizen. 8 U.S.C. § 1229a(a)(2). Removal proceedings begin when an immigration officer files the notice to appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court).

B. Noncitizens are Subject to Detention During Removal Proceedings

Under 8 U.S.C. § 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). DHS though has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

Under 8 U.S.C. § 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or

persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

DHS "at any time may revoke a bond or parole authorized under subsection (a), rearrest the noncitizen under the original warrant, and detain the alien." 8 U.S.C. § 1226(b); *see also* 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9) ("When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director [and certain other federal officers] in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.").

When DHS takes a noncitizen back into custody, the person can request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge may continue detention or release the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1).

Immigration bonds are generally covered by INA § 236, 8 CFR § 103.6, and 8 CFR § 1003.19. In this case, the immigration judge granted a bond in 2013, finding Petitioner detained under INA § 236(a). Once a noncitizen is released on bond, ICE can rearrest the person at any time on the original

warrant and revoke the bond. *See* INA 236(b); *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981). Due to recent changes in the law, see *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), ICE considers Petitioner now detained under INA § 235(b)(2)(A) as an applicant for admission and therefore subject to mandatory custody.

III. ARGUMENT

A. This Court should deny Petitioner's TRO motion.

1. Legal standard for granting a TRO.

The standards for a TRO and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). "To obtain a preliminary injunction, a plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (en banc) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)).

To carry its burden of persuasion, the moving party must make a "clear showing" on each of these four required elements. *Lopez v. Brewer*, 680 F.3d

1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

Because Petitioner here seeks a mandatory injunction, his burden is "doubly demanding." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). To succeed, he "must establish that the law and facts *clearly favor*" his position, "not simply that []he is likely to succeed." *Id.* (emphasis in original). Further, a mandatory injunction "is particularly disfavored" and may not be granted "unless extreme or very serious damage will result." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (cleaned up).

2. Petitioner's TRO motion should be denied because it improperly seeks final relief.

As a threshold matter, this Court should deny a TRO because the requested order goes well beyond merely maintaining the status quo pending a determination on the merits. The requested TRO improperly seeks the ultimate relief Petitioner demands in his habeas petition. The appropriate purpose of emergency equity "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 or TRO 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).

Petitioner's habeas petition seeks to end his detention. *See* ECF 1, Prayer for Relief (c). By seeking the same relief in his TRO motion, Petitioner would circumvent the habeas proceeding. The Ninth Circuit has firmly rejected this approach, concluding that "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); *see also Doe v. Bostock*, No. 24-326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024). Petitioner's TRO motion should be denied for the same reason.

3. Petitioner makes no showing of irreparable harm.

This Court should also deny Petitioner's motion because he fails to establish a likelihood of irreparable harm. To obtain a TRO, a party "must establish" that he is "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. To do so, the party must make a "showing on the facts" of the case and cannot rely on unsubstantiated argument and presumption. *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 998 (9th Cir. 2011); *see also Ovitsky v. Oregon*, No. 3:12-cv-02250-AA, 2013 WL 5253162, at *3 (D. Or. Sept. 16, 2013) (denying relief where plaintiff did not provide evidence of irreparable harm).

Petitioner makes no showing of a likelihood of irreparable harm. He speculates, without evidence, that he "is subject to being disappeared within the sprawling ICE detention system without the ability to communicate with his attorney." ECF 2, at 4. This fails to establish any entitlement to a TRO. Indeed, showing a "possibility" of irreparable harm is insufficient for such relief. *See Winter*, 555 U.S. at 22.

Petitioner may believe that he will be irreparably harmed by his detention, but this does not satisfy the inquiry for mandatory injunctive relief. It only "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Petitioner's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *Resendiz v. Holder*, No. 12-4850-WHA, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). "[A] noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm[.]" *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

4. Petitioner establishes no likelihood of success on the merits.

This Court should also deny Petitioner's motion because he fails to establish a likelihood of success on the merits of his habeas petition.

Petitioner argues that he is entitled to extraordinary equity because he "is likely to succeed on the merits of his claim under the Administrative Procedures [sic] Act." ECF 2 at 5. But his habeas petition (ECF 1) does not articulate or plead any APA claim. And there is a clear distinction between a habeas case and an APA case. The role played by the courts in habeas proceedings is far narrower than the judicial review authorized by the APA. *Heikkila v. Barber*, 345 U.S. 229, 236 (1953). Petitioner is requesting extraordinary habeas relief based on a phantom APA claim not even alleged in his habeas petition.

Petitioner otherwise establishes no likelihood of success on the merits, because his habeas claim is unsupported. He argues that he is likely to succeed because no individual determination was made that he is a flight risk or danger to the community. ECF 2 at 5. But a formal assessment of flight risk or danger is not a statutory or regulatory prerequisite before ICE may revoke a noncitizen's bond and detain the person for removal proceedings.

5. The equities and the public interest disfavor a TRO.

This Court should also deny Petitioner's motion because the equities and the public interest here disfavor a TRO.

The balance of equities and the public interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Courts "should pay particular regard for the public consequences in

employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

Petitioner argues that he meets his burden for a TRO because he is an asylum seeker[1], not a flight risk, and not a danger to the community. ECF 2 at 5. But the public interest in enforcement of the United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders). Further, the immigration laws and regulations provide for the relief sought here through the administrative process. This public interest outweighs Petitioner's private interest.

Petitioner also argues that the "merits" of supposed due process violations favor emergency relief. ECF 2 at 6. But this presupposes a due process violation, which Petitioner fails in the first instance to establish. Petitioner's argument does not satisfy the standard for emergency relief. It only "begs the constitutional questions presented in [his] petition by

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1 No asylum application (an I-589) for Petitioner has been filed with any component of the Department of Homeland Security.

assuming that [P]etitioner has suffered a constitutional injury." *Cortez v.* 2019 WL 1508458, at *3.

B. This Court should deny the habeas petition.

1. **DHS Re-detained Petitioner Based on his Specific Circumstances**

Petitioner claims DHS did not consider his individualized circumstances when it decided to re-detain him. Assuming *arguendo* DHS was required to consider Petitioner's individualized circumstances,[2] DHS did so.

Petitioner violated the conditions of his release by changing residential addresses without notifying ICE as required under 8 U.S.C. § 1305(a). During officers' investigation of another noncitizen, officers learned that Petitioner had changed addresses without notification. Based on his individualized circumstances, ICE revoked Petitioner's bond and took him into custody. Accordingly, DHS made "a rational connection between the facts found and the choice made" consistent with the requirements of the APA. *Dep't of Comm. v. New York*, 588 U.S. 752, 773 (2019) (quoting *Motor*

[2] Petitioner's argument that DHS must consider his individualized circumstances ignores that the statute and regulation authorizing DHS to re-detain noncitizens is broad and contains no such requirement. *See, e.g., Salvador F.-G. v. Noem*, No. 25-cv-0243, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025) (finding nothing in the statute or regulation authorizing the revocation of bond or parole to require a change in a noncitizen's circumstances before being re-detained).

Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

CONCLUSION

For these reasons, this Court should deny Petitioner's TRO motion and deny his petition for habeas relief.

DATED this 28th day of October 2025.

Respectfully Submitted,

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