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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS ALVARADO,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

CASE NO. 1:25-CV-01959-DJC-CSK

**RESPONSE TO THE COURT'S ORDER
REGARDING WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE ON THE
SAME TERMS AS THE TEMPORARY
RESTRAINING ORDER**

COURT: Hon. Daniel J. Calabretta

I. INTRODUCTION

The Government files this motion in response to the Court's order and asks the Court not to grant the preliminary injunction. On December 21, 2025, Petitioner Carlos Alvarado filed a writ of habeas corpus and temporary restraining order seeking an order releasing her from custody or providing a bond hearing. On December 29, 2025, the Court granted the TRO. The Court also ordered respondents to show cause no later than January 5, 2026, as to why the Court should not issue a preliminary injunction on the same terms as the TRO.

II. BACKGROUND

Petitioner is an alien from Honduras subject to a final order of removal. Both facts are undisputed by Petitioner. ECF 4 at 3. Petitioner appeared in immigration court and an immigration judge denied

Petitioner's application for withholding of removal and relief. ECF 4-1 at 14. Petitioner subsequently appealed the decision to the Board of Immigration Appeals, which dismissed it. In December 2018, Petitioner appealed the BIA dismissal, and the Ninth Circuit denied the appeal.

Petitioner is subject of a final order of removal. This fact is undisputed. ECF 4 at 3. According to Petitioner, he applied for U visa, and that application is pending. *Id.* Petitioner has not received a U visa. Accordingly, Petitioner is removable and subject to discretionary detention.

III. ARGUMENT

A. Petitioner is subject to detention and removal because of his final removal order.

Section 1231 governs "Detention, release, and removal of aliens ordered removed." 8 U.S.C. § 1231(a). This section applies only to aliens who have already been ordered removed. It establishes a "removal period" that lasts for ninety days, during which time "the Attorney General shall remove the alien." 8 U.S.C. § 1231(a)(1)(A). It also provides, "During the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2). The removal period begins on the latest of the following:

- (1) The date the order of removal becomes administratively final.
- (2) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (3) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

Here, Petitioner received a final removal order on December 18, 2018. On January 30, 2025, ICE issued Policy 11005.4, Interim Guidance on Civil Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits. Petitioner is subject to removal because he received a final removal order and has exhausted all appeals. Therefore, the Court should deny the petition and preliminary injunction.

B. Petitioner's detention was lawful because he has not shown that there is no significant likelihood of removal in the reasonably foreseeable future.

Petitioner's detention is lawful. While the Petitioner's post-removal-period detention has exceeded the presumptively reasonable six-month period, he has failed to sustain his burden of showing

1 there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533
2 U.S. 678, 690 and 701 (2001). Petitioner has not shown he is stuck in “removable-but-unremovable
3 limbo.” *Prieto-Romero v. Clark*, 534 F.3d at 1063. Petitioner has not alleged that the destination country,
4 Honduras, will not accept him. Nor has he cited to any United States law that bars his removal. Thus, he
5 is not in a “removable-but-unremovable limbo.” *Id.* ICE is actively pursuing Petitioner’s removal to
6 Honduras. Although Petitioner’s removal has not yet been scheduled, the removal process takes time.
7 Moreover, the fact that there is no scheduled removal date, and thus that Petitioner’s detention “does not
8 have a certain end date[,] does not change the analysis.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir.
9 2008) (citing *Prieto-Romero*, 534 F.3d at 1063).

10 Accordingly, Petitioner has failed to establish that there is no significant likelihood of removal in
11 the reasonably foreseeable future and should be detained.

12 Petitioner argues (1) he cannot be/remain detained because he cannot be removed, and (2) his
13 deferred action status immunizes him from removal. ECF 4 at 6. First, Petitioner can be removed from
14 the United States. His final removal order not only permits removal, but requires that the Attorney
15 General “shall” remove the alien. Petitioner is subject to a final order of removal and detained pursuant
16 to the Attorney General’s discretionary detention authority under 8 U.S.C. §1231(a)(6). Therefore, this
17 argument is without merit.

18 Second, Petitioner’s deferred action status does not negate the removal order. According to
19 Petitioner, his U visa application is pending, but has not been approved. Despite this, there are no legal
20 or policy impediments to ICE enforcement actions for those with pending U visas, ICE Policy 11005.4
21 (second attachment), Interim Guidance on Civil Enforcement Actions Involving Current or Potential
22 Beneficiaries of Victim-Based Immigration Benefits (Jan. 30, 2025). Therefore, the Petitioner, despite
23 alleging to having a pending U visa, may be detained by ICE.

24 **C. The Court should not grant a preliminary injunction.**

25 Preliminary injunctions are “an extraordinary remedy that may only be awarded upon a clear
26 showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
27 (2008) (citations omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to
28

1 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
2 the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.*

3 A plaintiff seeking a preliminary injunction must establish:

- 4 (1) that he is likely to succeed on the merits;
5 (2) that he is likely to suffer irreparable harm in the absence of preliminary relief;
6 (3) that the balance of equities tips in his favor; and
7 (4) that an injunction is in the public interest.

8 *Id.* at 20 (citations omitted); *See also Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

9 Here, Petitioner is unlikely to succeed on the merits because he is subject to a removal order. He
10 may be properly detained pending removal under Section 1231. He exhausted his appellate procedures
11 and was denied relief. He is therefore unlikely to prevail on the merits of his habeas petition. Likewise, he
12 is unlikely to suffer irreparable harm in the absence of a preliminary injunction because his detention was
13 lawful under Section 1231. Additionally, injunction relief is not in the public interest here because
14 Petitioner is subject to removal under Section 1231. This is not a detention issue under Sections 1225 or
15 1226—here Petitioner has a removal order and ICE is seeking to remove him. Therefore, the Court should
16 deny the habeas petition and preliminary injunction.

17 **IV. CONCLUSION**

18 For the reasons set forth above, Petitioner’s Motion for a Preliminary Injunction and habeas relief
19 should be denied, and the TRO should be vacated.

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21 Dated: January 5, 2026

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23 By: /s/ CODY S. CHAPPLE
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