

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMADO ARMANDO VALDES-OVIEDO,

Petitioner,

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT FIELD OFFICE
DIRECTOR,

Respondent.

Case No. 2:25-cv-02720-KKE

FEDERAL RESPONDENT'S
OPPOSITION TO PETITIONER'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

INTRODUCTION

The Federal Respondent opposes Petitioner's emergency motion for a temporary restraining order (TRO) prohibiting his transfer from the Northwest Immigration Processing Center (NWIPC) during the pendency of this habeas proceedings. Dkt. 9. The Federal Respondent has filed a return establishing that Petitioner's habeas petition should be denied without an evidentiary hearing for four reasons. Dkts. 6-8. First, his order of supervision was properly revoked pursuant to 8 C.F.R. § 241.13(i)(2) due to changed circumstances in that Petitioner can now be removed from the United States to a third country. Second, Petitioner's detention is not indefinite

1 under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), because ICE believes that removal to a third
2 country is likely in the reasonably foreseeable future. Third, Petitioner has failed to exhaust his
3 administrative remedies; he has not alleged that he has sought a bond hearing or that any bond
4 hearing he was given was procedurally improper or deficient. And fourth, this Court lacks
5 jurisdiction to enjoin Petitioner's re-detention and removal to a third country.

6 As set out in the Federal Respondent's return, U.S. Immigration and Customs Enforcement
7 and Removal Operations (ERO) is pursuing third country removal to Mexico and has served
8 Petitioner with two notices of this third country removal. Dkt. 7, Ex. J; Dkt. 8, ¶¶ 12-14. ERO will
9 need to transfer Petitioner from the NWIPC to effectuate his removal to Mexico. The Court should
10 deny Petitioner's emergency request to enjoin ICE from transferring him and prohibiting ICE from
11 effectuating his final order of removal, because he cannot meet the standard for a TRO.

12 LEGAL STANDARD

13 The standard for issuing a TRO is "substantially identical" to the standard for issuing a
14 preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7
15 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and
16 drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the
17 burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original)
18 (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

19 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
20 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
21 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555
22 U.S. at 20. 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 third *Winter*

1 factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)
2 (internal quotation omitted).

3 The purpose of preliminary injunctive relief is to preserve the status quo pending final
4 judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v.*
5 *Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take
6 two forms.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th
7 Cir. 2009). “A prohibitory injunction prohibits a party from taking action and ‘preserves the
8 status quo pending a determination of the action on the merits.’” *Id.*, (internal quotation omitted).
9 “A mandatory injunction orders a responsible party to take action.” *Id.* at 879 (internal quotation
10 omitted). “A mandatory injunction goes well beyond simply maintaining the status quo pendente
11 lite and is particularly disfavored.” *Id.* (internal quotation omitted). “In general, mandatory
12 injunctions are not granted unless extreme or very serious damage will result and are not issued
13 in doubtful cases.” *Id.* (internal quotation omitted). Where a plaintiff seeks mandatory injunctive
14 relief, “courts should be extremely cautious.” *Stanley*, 13 F.3d at 1319 (internal quotation
15 omitted). Thus, in a mandatory injunction request, the moving party “must establish that the law
16 and facts *clearly favor* [his] position, not simply that [he] is likely to succeed.” *Garcia*, 786 F.3d
17 at 740 (emphasis in original).

18 ARGUMENT

19 Petitioner cannot meet the high standard for entry of an emergency TRO. First, Petitioner
20 has not established that he is likely to succeed on the merits. Petitioner does not argue that he is
21 likely to succeed on the merits of his habeas petition. Dkt. 9. He did not file a traverse to the
22 Federal Respondent’s return, which establishes four reasons why his habeas petition should be
23 denied. *Id.* He also did not present any arguments in his motion for a TRO opposing the Federal
24 Respondent’s return. *Id.* Rather, he only argues that transfer would amount to irreparable harm.

1 *Id.* But in order to obtain emergency injunctive relief of a TRO, Petitioner must establish a
2 likelihood of success on the merits. *Winter*, 555 U.S. at 20.

3 Here, Petitioner has failed to make any showing of success on the merits. The Federal
4 Respondent rests on the arguments presented in the return establishing that ICE has lawfully
5 detained Petitioner, a citizen of Cuba who is subject to a final removal order, to facilitate his
6 removal from the United States, and that Petitioner's removal to a third country, namely Mexico,
7 is likely in the reasonably foreseeable future. Dkts. 6-8. Thus, because Petitioner has not
8 established that he is likely to succeed on the merits, his emergency motion for a TRO should be
9 denied.

10 Second, the balance of equities tips in the government's favor and an injunction
11 prohibiting ICE from transferring Petitioner to effectuate his removal to Mexico is not in the
12 public interest. The U.S. Department of Homeland Security (DHS) has broad authority under 8
13 U.S.C. § 1231(g) to determine the placement and transfer of detainees to appropriate detention
14 facilities. Section 1231(g) explicitly authorizes DHS to arrange for appropriate places of
15 detention for individuals detained pending removal or a decision on removal. *See also* 2011 U.S.
16 Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011
17 (rev. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

18 Here, ERO is pursuing third country removal to Mexico and has served Petitioner with
19 notice of this third country removal. Dkt. 7, Ex. J; Dkt. 8, ¶¶ 12-14. ERO will need to transfer
20 Petitioner from the NWIPC to effectuate his removal to Mexico. The Court should deny
21 Petitioner's emergency request to enjoin ICE from transferring him and defer to ICE's discretion
22 when determining the placement of immigration detainees.

CONCLUSION

For the foregoing reasons, Petitioner's emergency motion for a TRO should be denied.

DATED this 28th day of January, 2026.

Respectfully submitted,

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s/ Kristin B. Johnson

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I certify that this memorandum contains 1,072 words, in compliance with the Local Civil Rules.