

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Ortega v. Kaiser

Ortega v. Kaiser · No. 25-cv-05259-JST · Decided June 26, 2025

SUMMARY

The United States District Court for the Northern District of California granted Giovanni Hernan Ortega’s motion for a temporary restraining order. The court enjoined the government from arresting, detaining, or removing Ortega without notice and a hearing, finding serious questions regarding his due process and immigration detention claims, likely irreparable harm, and a favorable balance of equities. The order remained in effect until July 10, 2025, at 9:00 a.m., unless extended or superseded.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 26, 2025
DOCKET	25-cv-05259-JST
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner-plaintiff sought a temporary restraining order in a habeas corpus action to prevent the Government from arresting, detaining, or removing him pending resolution of his claims.
STANDARD OF REVIEW	A temporary restraining order is evaluated under the four-factor preliminary-injunction test: likelihood of success on the merits, likely irreparable harm, balance of equities, and the public interest. Under the Ninth Circuit's serious-questions sliding-scale approach, serious questions on the merits and a sharply favorable balance of hardships may support relief if the plaintiff also shows likely irreparable injury and that the injunction is in the public interest.
PRECEDENTIAL VALUE	Nonprecedential interlocutory district-court order granting a temporary restraining order
PARTIES	Giovanni Hernan Ortega v. Polly Kaiser, Todd Lyons, Kristi Noem, Pamela Bondi

TOPICS

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QUESTIONS PRESENTED

1. Whether Ortega showed serious questions as to whether due process, the Immigration and Nationality Act, FARRA, and the APA require notice and an opportunity to present a fear-based claim before removal to a country other than El Salvador.
2. Whether Ortega showed serious questions as to whether the Fifth Amendment and the INA preclude his detention when removal is not reasonably foreseeable and without a pre-detention hearing.
3. Whether Ortega satisfied the requirements for a temporary restraining order under the preliminary-injunction factors.
4. Whether the notice and security requirements of Federal Rule of Civil Procedure 65 and Civil Local Rule 65-1(b) were satisfied and whether security should be required.

HOLDINGS

1. A temporary restraining order may issue where the plaintiff shows serious questions going to the merits, a balance of hardships that tips sharply in the plaintiff's favor, likely irreparable injury, and that the injunction is in the public interest.
2. The court found serious questions as to whether Ortega could be removed to any country without first receiving notice of that country and an opportunity to present a fear-based claim concerning it.
3. The court found serious questions as to whether ICE could detain Ortega without a pre-deprivation hearing when his removal was not reasonably foreseeable and he had complied with supervision requirements for years.
4. The court held that Ortega was likely to suffer irreparable harm, and that the balance of equities and public interest sharply favored temporary relief.
5. No security was required because the Government showed no realistic likelihood of harm from being temporarily enjoined.

KEY QUOTATIONS

“Respondents-Defendants are enjoined and restrained from arresting, detaining, or removing Ortega without notice and a hearing.” (Conclusion)

FACTUAL BACKGROUND

Ortega, a derivative asylee from El Salvador, had lived in the United States since 1990 and completed a lengthy criminal sentence in 2017. An immigration judge released him on bond in 2018 after finding that he was neither a danger to the community nor a flight risk, and his removal to El Salvador was deferred under the Convention

Against Torture. Ortega remained out of custody for seven years, complied with parole and ICE supervision requirements, had no new criminal-justice contacts, and was scheduled to report to ICE on July 9, 2025. He feared that ICE would arrest and detain him at that appointment and sought an order preventing detention or removal without notice and an opportunity to be heard.

PROCEDURAL HISTORY

Ortega filed a habeas petition and motion for a temporary restraining order on June 23, 2025, then filed an amended petition and amended motion on June 25, 2025. The district court granted the amended motion pending further briefing and a hearing.

DISPOSITION

other

CASES CITED

- Department of Homeland Security v. D.V.D., No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025)
- Stuhlberg International Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001)
- American Trucking Associations, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009)
- Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20, 22 (2008)
- Leiva-Perez v. Holder, 640 F.3d 962, 966, 970 (9th Cir. 2011) (per curiam)
- Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011)
- Torres-Aguilar v. I.N.S., 246 F.3d 1267, 1270 (9th Cir. 2001)
- Campos-Sanchez v. I.N.S., 164 F.3d 448, 450 (9th Cir. 1999)
- Arizmendi-Medina v. Garland, 69 F.4th 1043, 1053 (9th Cir. 2023)
- Aden v. Nielsen, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)
- Mathews v. Eldridge, 424 U.S. 319, 335, 349 (1976)
- Kossov v. I.N.S., 132 F.3d 405, 408 (7th Cir. 1998)
- Najjar v. Lunch, 630 F. App'x 724 (9th Cir. 2016)
- Vargas v. Jennings, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020)
- Jorge M. F. v. Wilkinson, No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021)
- Diaz v. Kaiser, No. 3:25-cv-05071, 2025 WL 1676854, at *2-*3 (N.D. Cal. June 14, 2025)
- Zadvydas v. Davis, 533 U.S. 678, 690-91, 693, 699-700 (2001)
- Tadros v. Noem, No. 2:25-cv-4108-EP, 2025 WL 1678501, at *2-*3 (D.N.J. June 13, 2025)
- Tadros v. Noem, No. 2:25-cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17
- Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)
- Elrod v. Burns, 427 U.S. 347, 373 (1976)
- Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017)
- Nken v. Holder, 556 U.S. 418, 435 (2009)

- Zepeda v. I.N.S., 753 F.2d 719, 727 (9th Cir. 1983)
- Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003)

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