

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jenifer Nohelia Hernandez Lopez v. Sergio Albarran, et al.

Hernandez Lopez v. Albarran · No. 1:25-cv-01890-DAD-SCR (HC) · Decided December 19, 2025

OPINION

Albarran

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JENIFER NOHELIA HERNANDEZ No. 1:25-cv-01890-DAD-SCR (HC)

LOPEZ,

12 Petitioner,

13 ORDER GRANTING PETITIONER’S EX

v. PARTE MOTION FOR TEMPORARY

14 RESTRAINING ORDER

SERGIO ALBARRAN, et al., 15 (Doc. No. 2) Respondents. 16 17 18 This matter is before the
court on petitioner’s ex parte motion for temporary restraining 19 order filed on December 16,
2025. (Doc. No. 2.) For the reasons explained below, the court will 20 grant petitioner’s ex parte
motion for temporary restraining order.

21 BACKGROUND

22 On December 16, 2025, petitioner Jenifer Nohelia Hernandez Lopez filed a petition for 23 writ
of habeas corpus pursuant to 28 U.S.C. § 2241 challenging her detention by the United 24 States
Immigration and Customs Enforcement (“ICE”). (Doc. No. 1.) Petitioner asserts the 25 following
two claims in that petition: (1) deprivation of substantive due process as a result of her 26
detention in violation of the Fifth Amendment; and (2) deprivation of procedural due process as a
27 result of her detention in violation of the Fifth Amendment. (Id. at ¶¶ 58–64.) In support of the
28 // 1 pending motion for temporary restraining order, petitioner has provided evidence of the
following 2 facts based on information and belief. 3 Petitioner fled Honduras in June 2023. (Doc.
No. 2-3 at ¶¶ 4–5.) She was paroled into the 4 United States shortly after being detained at the
border. (Id. at ¶ 4.) Petitioner has complied with 5 the requirements and conditions of her release,
including appearing for in-person and 6 photographic check-ins. (Id. at ¶ 6.) Petitioner has not
been arrested for or convicted of a crime 7 since her release. (Id.) On December 8, 2025,
petitioner was re-detained when she appeared for 8 an in-person check in at the San Jose ICE

Office. (Doc. No. 2-2 at ¶ 3.) Petitioner was re- 9 detained without written notice of the reason for her re-detention. (Doc. No. 2-3 at ¶ 7.) In her 10 habeas petition, petitioner alleges that she was paroled into the United States pursuant to 8 U.S.C. 11 § 1226(a) and that she intends to apply for asylum at her next hearing in immigration court on

12 October 25, 2027. (Doc. No. 1 at ¶¶ 33, 35.)

13 On December 16, 2025, petitioner filed the pending motion for temporary restraining 14 order. (Doc. No. 2.) In that motion, petitioner requests that the court order her immediate release 15 from custody and enjoin respondents from re-detaining her without a hearing before a neutral 16 adjudicator.¹ (Doc. No. 2-1 at 2–3.) On December 17, 2025, the court directed petitioner’s 17 counsel to serve respondents with a copy of the petition, the motion for temporary restraining 18 order, and accompanying papers, and set a briefing schedule on the pending motion. (Doc. No. 19 5.) On December 18, 2025, respondents filed their opposition. (Doc. No. 9.) 20 // 21 1 Petitioner also requests an order prohibiting the government from transferring her out of this district or removing her from the country in order to preserve the court’s jurisdiction. (Doc. No. 22 2-1 at 3.) The court need not make an order preserving its jurisdiction because habeas petitions 23 are properly heard in the district where the petitioner was detained when the petition was filed. See *Y.G.H. v. Trump*, 787 F. Supp. 3d 1097, 1105 (E.D. Cal. 2025). Petitioner does not provide 24 argument regarding the court’s authority to enjoin removal proceedings. (Doc. No. 2-1.) It does not appear to the court that petitioner is currently subject to a final removal order and the court 25 cannot enjoin ongoing removal proceedings. See *Maxwell v. Nielsen*, No. 2:14-cv-02772-TLN-AC (PS), 2018 WL 6304886, at *7 (E.D. Cal. Dec. 3, 2018) (“[T]he district court lacks authority 26 to intervene in ongoing removal proceedings.”), report and recommendation adopted in part sub 27 nom., *Maxwell v. Holder*, 2018 WL 6831133 (E.D. Cal. Dec. 28, 2018). Accordingly, the court will deny without prejudice petitioner’s request for an order restraining respondents from 28 transferring her out of this district or removing her from the country.

1 LEGAL STANDARD

2 The standard governing the issuing of a temporary restraining order is “substantially 3 identical” to the standard for issuing a preliminary injunction. See *Stuhlbarg Int’l Sales Co. v. 4 John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). “The proper legal standard for 5 preliminary injunctive relief requires a party to demonstrate ‘that he is likely to succeed on the 6 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the 7 balance of equities tips in his favor, and that an injunction is in the public interest.’” *Stormans, 8 Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, 9 Inc.*, 555 U.S. 7, 20 (2008)); see also *Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1172 (9th 10 Cir. 2011) (“After *Winter*, ‘plaintiffs must establish that irreparable harm is likely, not just 11 possible, in order to obtain a preliminary injunction.’”); *Am. Trucking Ass’n, Inc. v. City of Los 12 Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). A plaintiff seeking a preliminary injunction must 13 make a showing on all four of these prongs. *All. for the Wild Rockies v. Cottrell*, 632 F.3d

1127, 14 1135 (9th Cir. 2011). The Ninth Circuit has also held that “[a] preliminary injunction is
15 appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were 16
raised and the balance of hardships tips sharply in the plaintiff’s favor.” *Id.* at 1134–35 (citation 17
omitted). The party seeking the injunction bears the burden of proving these elements. *Klein v.* 18
City of San Clemente, 584 F.3d 1196, 1201 (9th Cir. 2009); see also *Caribbean Marine Servs. Co.*
19 *v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citation omitted) (“A plaintiff must do more
20 merely allege imminent harm sufficient to establish standing; a plaintiff must demonstrate
21 immediate threatened injury as a prerequisite to preliminary injunctive relief.”). Finally, an 22
injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the 23
plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. 24 The likelihood of success on the
merits is the most important *Winter* factor. See *Disney 25 Enters., Inc. v. VidAngel, Inc.*, 869 F.3d
848, 856 (9th Cir. 2017). Plaintiff bears the burden of 26 demonstrating a likelihood of success on
the merits of the claims presented or, at the very least, 27 that “serious questions going to the
merits were raised.” *All. for Wild Rockies*, 632 F.3d at 1131. 28 ////

1 DISCUSSION

2 A. Likelihood of Success on the Merits 3 Petitioner argues that she is likely to prevail on her
claim that her re-detention on

4 December 8, 2025, was unlawful because procedural due process requires that she be provided
5 notice and an opportunity to be heard prior to any re-detention, and because substantive due 6
process requires a finding that she poses either a danger to the community or a flight risk to 7
justify her re-detention. (Doc. No. 2-1 at 6, 12.) Respondents argue in essence that petitioner can 8
be re-detained at any time, for any reason. (Doc. No. 9 at 2.) Respondents also argue, without 9
supporting citation to any authority, that petitioner’s failure to apply for asylum within the one- 10
year time limit is a change in circumstances that justifies her re-detention. (Doc. No. 9 at 2–3.) 11
Respondents appear to concede that petitioner was originally released pursuant to 8 U.S.C. 12 §
1226(a). (Doc. No. 9 at 2.) 13 In setting the briefing schedule for the pending motion for a
temporary restraining order, 14 the court specifically directed respondents to substantively address
whether any provision of law 15 or fact in this case would distinguish it from that which was the
subject of this court’s decision in 16 *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK (HC), 2025
WL 3187578 (E.D. Cal. Nov. 14, 17 2025), and other similar cases previously decided by this
court.² (Doc. No. 5.) Respondents 18 complain that petitioner’s failure to provide her A-number
in her petition made it challenging to 19 compare the instant facts with those addressed in *Perez*
but do not ask for any relief in this regard, 20 such as additional time to respond. (Doc. No. 9 at 1–
2 n.2.) In any event, respondents do not 21 address whether any facts or provision of law
distinguishes this case from *Perez*. The court will 22 construe respondents’ non-responsiveness to
the court’s specific inquiry as a concession that the 23 present matter and *Perez* are not
substantively distinguishable on this point. Thus, the court will 24 incorporate and adopt the
reasoning set forth in that order with respect to petitioner’s likelihood 25 of success on the merits

of her Fifth Amendment claim under the factors set forth in *Mathews v. 26 Eldridge*, 424 U.S. 319, 335 (1976). Accordingly, the court concludes that petitioner has satisfied 27 2 As in this case, in *Perez* the undersigned addressed the procedural due process right that a non- 28 citizen detainee possesses when they are released from custody pursuant to § 1226(a). 1 her burden of establishing likelihood of success on the merits as to the first and third *Mathews* 2 factors. 3 The only argument the court did not address in *Perez* that respondents advance here is 4 whether petitioner’s alleged failure to timely apply for asylum constitutes a change in 5 circumstances justifying her re-detention without notice and a pre-detention hearing before a 6 neutral adjudicator. Whether respondents make an adequate showing of changed circumstances 7 may affect the weight of the second *Mathews* factor, the risk of erroneous deprivation. See, e.g., 8 *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 9 2025) (finding that the petitioner’s risk of erroneous deprivation was high because a bond hearing 10 would likely reveal that the petitioner still presented no public safety or flight risk); *Pinchi v. 11 Noem*, No. 25-cv-05632-RMI-RFL, 2025 WL 1853763, at *2 (N.D. Cal. July 4, 2025) (finding a 12 risk of erroneous deprivation without a bond hearing pre-detention where the petitioner was re- 13 detained after having been released on her own recognizance at the border by immigration 14 officials). 15 According to respondents, petitioner’s time to apply for asylum expired in June 2024. 16 (Doc. No. 9 at 2.) Yet petitioner remained on conditional parole pursuant to § 1226(a) until her 17 re-detention in December 2025, one and a half years later, during which time petitioner continued 18 to report to ICE as required by the conditions of her parole. (Doc. Nos. 2-1 at 4; 2-3 at ¶ 6.) The 19 court is unconvinced that petitioner’s alleged failure to timely apply for asylum constitutes a 20 change in circumstances justifying her re-detention. See *Hernandez v. Lyons*, No. 2:25-cv-05376- 21 FWS-AGR (HC), 2025 WL 3191822, at *5 (C.D. Cal. June 18, 2025) (holding that an 22 immigration judge’s determination that the petitioner was not eligible for asylum or withholding 23 of removal, but was eligible for Convention Against Torture (“CAT”) relief was “not the sort of 24 changed circumstance that courts generally find sufficient to justify rearrest”); see also *Doe v. 25 Chestnut*, No. 1:25-cv-01372-CDB (HC), 2025 WL 3295154, at *2, *9 (E.D. Cal. Nov. 26, 2025) 26 (holding that the respondents did not articulate changed circumstances despite the fact that the 27 petitioner’s second stay of removal application was denied about one month before his re- 28 detention). Therefore, the court concludes that consideration of the second *Mathews* factor also 1 weighs in favor of granting petitioner’s motion for a temporary restraining order. 2 Accordingly, the court concludes that petitioner has established that she is likely to 3 succeed on the merits of her procedural due process claim. In light of that conclusion, the court 4 need not address petitioner’s remaining claim at this time. All. For *Wild Rockies*, 632 F.3d at 5 1139 (declining to address remaining claims after finding that the plaintiff established that there 6 were serious questions going to the merits of one claim). 7 B. Irreparable Harm, Balance of Equities, and Public Interest 8 The court has also previously analyzed the remaining *Winter* factors under substantially 9 similar

circumstances, specifically regarding improper re-detention and the ongoing harm 10 stemming from a petitioner's unlawful detention. See *Perez*, 2025 WL 3187578, at *4. The court 11 incorporates by reference that analysis and finds that consideration of the remaining Winter 12 factors also weighs in favor of granting petitioner's motion for a temporary restraining order. 13 C. Status Quo 14 "The status quo ante litem is the last uncontested status which preceded the pending 15 controversy." *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal.

16 July 16, 2025) (internal quotation marks and brackets omitted) (quoting *GoTo.com, Inc. v. Walt* 17 *Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). "A TRO immediately releasing Petitioner is 18 appropriate to return [her] to the status quo. . . . That is the moment prior to Petitioner's likely 19 illegal detention." *Larios v. Albarran*, No. 25-cv-08799-AMO, 2025 WL 2939223, at *3 (N.D. 20 Cal. Oct. 16, 2025). Accordingly, the court concludes that the immediate release of petitioner on 21 the same conditions that governed her release prior to her detention on December 8, 2025, is 22 necessary in order to restore the status quo.

23 CONCLUSION

24 For the reasons set forth above, 25 1. Petitioner's motion for a temporary restraining order (Doc. No. 2) is GRANTED 26 in part as follows: 27 ///// 28 ///// 1 a. Respondents are ORDERED to immediately release petitioner from 2 respondents' custody on the same conditions that governed her release 3 immediately prior to her detention on December 8, 2025; 4 b. Respondents are ENJOINED AND RESTRAINED from re-detaining 5 petitioner for any purpose, absent exigent circumstances, without providing 6 petitioner notice and a pre-detention hearing before a neutral adjudicator; 7 C. Petitioner's request for a temporary restraining order enjoining respondents 8 from removing her is DENIED without prejudice to a renewed and 9 properly supported motion for temporary restraining order should such a 10 request become ripe; and 11 2. The parties are directed to meet and confer and, if possible, submit a joint 12 proposed briefing schedule and hearing date with respect to any motion for a 13 preliminary injunction no later than fourteen (14) days from the date of entry of 14 this order; and 15 3. Under the circumstances of this case, petitioner will not be required to post bond 16 pursuant to Rule 65(c) of the Federal Rules of Civil Procedure. 17 IT IS SO ORDERED. Dated: _ December 19, 2025 Dak A. 2d, Arye

19 DALE A. DROZD

30 UNITED STATES DISTRICT JUDGE

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