

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Domingo-Ros v. Archambeault

No. 25-cv-1208-DMS-DEB (S.D. Cal. May 18, 2025) · No. 25-cv-1208-DMS-DEB · Decided May 18, 2025

OPINION

Domingo-Ros v. Archambeault

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 10 Case No.: 25-cv-1208-DMS-DEB

JESUS DOMINGO-ROS; YONI

11 JACINTO GARCIA; and EDWIN

ORDER CONFIRMING

JUAREZ-COBON,

12 TEMPORARY RESTRAINING

O R D E R

13 Petitioners-Plaintiffs, 14 v.

15 GREGORY J. ARCHAMBEAULT, San

Diego Field Office Director, Immigration 16 and Customs Enforcement, Enforcement 17 and
Removal Operations; and JEREMY CASEY, Warden, Imperial Regional 18 Detention Facility,
Calexico, California, 19 Respondents-Defendants. 20 21 Pending before the Court is Petitioners’
Application for Temporary Restraining 22 Order (“TRO”). (TRO, ECF No. 2). The matter came
on for hearing on May 16, 2025. 23 Niels Frenzen appeared for Petitioners, and Lisa Hemann and
Erin Dimbleby appeared for 24 Respondents. After hearing from counsel, the Court GRANTED
Petitioners’ Application 25 for TRO and entered a minute order confirming the ruling. For the
following reasons, the 26 Court CONFIRMS its TRO and previously set hearing dates, SETS a
status conference 27 for Monday, May 19, 2025 at 3:00 p.m., and ORDERS the parties to meet
and confer 28 regarding additional briefing.

1 I. BACKGROUND

2 Petitioners Jesus Domingo-Ros, Yoni Jacinto Garcia, and Edwin Juarez-Cobon are 3 in the
custody of Immigration and Customs Enforcement (“ICE”) and detained at the 4 Imperial
Regional Detention Facility in Calexico, California, following their warrantless 5 arrests for
“unlawful entry” on April 22, 2025. The arrests were effected by U.S. Border 6 Patrol Agents
 (“BPAs” or “Agents”) in a Home Depot parking lot in Pomona, California, 7 approximately 191

miles north of the Calexico, California Port of Entry. (Petition for Writ 8 of Habeas Corpus (“Petition”), ECF No. 1). On the morning of April 22, at 4 a.m., Border 9 Patrol Agents traveled to Pomona to execute an active arrest warrant for Martin Majin- 10 Leon, a Mexican national. (Id. at 5); (ECF No. 2-2). The Agents apprehended Majin-Leon 11 at his place of employment at 9:07 a.m. (Id. at 5–6). After achieving the purpose of their 12 dispatch to the area, the Agents drove to a nearby “debriefing staging location” at a Home 13 Depot parking lot located at 2707 S. Towne Avenue in Pomona. (Id. at 6); (Petition, at 5). 14 The details of the encounter between Petitioners and the BPAs are disputed. 15 Petitioners allege they were among at least nine individuals present at Home Depot in the 16 hopes of receiving informal work as day laborers. (Id.). When the Agents arrived, 17 Petitioners and others attempted to leave by walking or running away. (Id.). Before they 18 could leave, several Agents approached and conducted “detentive stops without reasonable 19 suspicion.” (Id.). After asking questions and apparently learning that Petitioners were 20 citizens of Guatemala without authorization to be in the United States, they were arrested 21 and transported to the El Centro Sector Centralized Processing Center in Imperial County, 22 California for further questioning. (Id.). 23 According to the Government, the BPAs, upon arriving at Home Depot, witnessed 24 several individuals fleeing the scene. (ECF No. 2-2, at 6). This “unprovoked flight” 25 prompted them to question several individuals, including Petitioners, through “consensual 26 encounters.” (Id.). These encounters led the Agents to determine that Petitioners were in 27 the United States unlawfully. (Id.). Petitioners were arrested without a warrant because 28 their “attempt[s] to flee to avoid arrests” made them “flight risk[s].” (Id. at 6, 11, 17). 1 Following their arrests, Petitioners were issued Expedited Removal Orders pursuant 2 to 8 U.S.C. § 1225(b)(1) and are now at “imminent risk of removal from the United States 3 as a result of being unlawfully arrested[.]” (Petition, at 1). Petitioners filed a petition for 4 writ of habeas corpus with this Court claiming their detention and the process by which 5 their Expedited Removal Orders were issued violated the Fourth and Fifth Amendments to 6 the U.S. Constitution; 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (Expedited Removal Orders 7 “lacked factual basis” that Petitioners were physically present in the United States for less 8 than two years); and 8 U.S.C. § 1357(a)(2) (improper warrantless arrests). (Id. at 11). 9 Petitioners seek issuance of (1) a writ of habeas corpus and order of release of Petitioners 10 and (2) an order vacating the Expedited Removal Orders and requiring Respondents to 11 provide Petitioners with hearings pursuant to 8 U.S.C. § 1229a. (Id. at 10). Along with 12 their habeas petition, Petitioners filed the subject Application for TRO seeking to prohibit 13 removal from the United States and transfer to a detention facility outside the Southern 14 District of California pending their challenge to the expedited removal process. (TRO, at 15 3).

16 II. LEGAL STANDARD

17 A. Temporary Restraining Order 18 The standard for issuing a TRO is identical to the standard for issuing a preliminary 19 injunction. See *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.Supp. 20 1320, 1323 (N.D. Cal. 1995). “A party seeking a preliminary

injunction must meet one of 21 two variants of the same standard.” All. for the Wild Rockies v. Pena, 865 F.3d 1211, 1217 22 (9th Cir. 2017). Under the Winter standard, a party is entitled to a preliminary injunction 23 if it demonstrates (1) “that [it] is likely to succeed on the merits,” (2) “that [it] is likely to 24 suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of 25 equities tips in [its] favor,” and (4) “that an injunction is in the public interest.” Winter, 26 555 U.S. at 20. 27 Under the Ninth Circuit’s “‘serious questions’ test—a ‘sliding scale’ variant of the 28 Winter test— . . . a party is entitled to a preliminary injunction if it demonstrates (1) 1 ‘serious questions going to the merits,’ (2) ‘a likelihood of irreparable injury,’ (3) ‘a 2 balance of hardships that tips sharply towards the plaintiff,’ and (4) ‘the injunction is in the 3 public interest.’” Flathead-Lolo-Bitterroot Citizen Task Force v. Montana, 98 F.4th 1180, 4 1190 (9th Cir. 2024) (quoting All. for the Wild Rockies, 865 F.3d at 1217). Under the 5 “serious questions” test, “if a plaintiff can only show that there are serious questions going 6 to the merits—a lesser showing than likelihood of success on the merits—then a 7 preliminary injunction may still issue if the balance of hardships tips sharply in the 8 plaintiff’s favor, and the other two Winter factors are satisfied.” All. for the Wild Rockies, 9 865 F.3d at 1217 (quoting Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 10 (9th Cir. 2013) (internal quotations omitted)) (emphasis in original). A plaintiff need 11 demonstrate likely success or serious questions to only one of their claims to receive a 12 TRO. See Ozkay v. Equity Wave Lending, Inc., 2020 WL 12764953, at *2 (N.D. Cal.

13 Nov. 25, 2020).

14 Injunctive relief can be prohibitory or mandatory. “A prohibitory injunction 15 prohibits a party from taking action and ‘preserve[s] the status quo pending a determination 16 of the action on the merits.’” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 17 571 F.3d 873, 878 (9th Cir. 2009) (quoting Chalk v. U.S. Dist. Ct., 840 F.2d 701, 704 (9th 18 Cir. 1988)). “A mandatory injunction orders a responsible party to take action[,] . . . goes 19 well beyond simply maintaining the status quo [p]endente lite[,] [and] is particularly 20 disfavored.” Id. at 879 (internal quotation marks and citations omitted). “The status quo 21 means ‘the last, uncontested status which preceded the pending controversy.’” N.D. ex rel. 22 Parents Acting as Guardians Ad Litem v. State of Haw. Dep’t of Educ., 600 F.3d 1104, 23 1112 n.6 (9th Cir. 2010) (quoting Marlyn Nutraceuticals, Inc., 571 F.3d at 879). Petitioners 24 seek a prohibitory injunction because they seek to preserve the status quo preceding this 25 litigation—their physical presence in the United States free from detention. 26 A district court may consider “the parties’ pleadings, declarations, affidavits, and 27 exhibits submitted in support of and in opposition to the [motion for temporary restraining 28 order].” Cal. Rifle & Pistol Ass’n, Inc. v. Los Angeles Cnty. Sheriff’s Dep’t, 745 F.Supp.3d 1 1037, 1048 (C.D. Cal. 2024); see also Johnson v. Couturier, 572 F.3d 1067, 1083 (9th Cir. 2 2009) (finding district court did not abuse its discretion in granting preliminary injunction 3 when it relied on hearsay evidence and “the many exhibits, affidavits, declarations and 4 factual allegations which have been submitted . . . by all parties . . . throughout

the course 5 of this litigation”). Any evidentiary issues “properly go to weight rather than 6 admissibility.” *Am. Hotel & Lodging Ass’n v. City of Los Angeles*, 119 F.Supp.3d 1177, 7 1185 (C.D. Cal. 2015).

8 III. DISCUSSION

9 Petitioners seek a TRO “enjoining Respondents from removing Petitioners from the 10 United States and from relocating Petitioners outside of the [Southern District of 11 California] pending this litigation.” (TRO, at 3). Petitioners allege their Expedited 12 Removal Orders are based on information elicited from unlawful detentions and lack a 13 proper factual basis regarding the time they were physically present in the United States. 14 Petitioners also allege that their detention and the process by which the Expedited Removal 15 Orders were issued violated the Fourth and Fifth Amendments and 8 U.S.C. § 1357(a)(2). 16 For the reasons discussed, Petitioners have met their burden for a TRO. 17 A. Serious Questions Going to the Merits 18 Petitioners’ first claim for relief alleges Fourth Amendment violations occurred 19 when they were stopped and questioned without reasonable suspicion. Their third claim 20 for relief alleges Fifth Amendment procedural due process violations occurred when they 21 were: (a) not afforded an adequate process to challenge the “manner in which the Expedited 22 Removal process [was] used against them within the interior of the United States,” and (b) 23 precluded from “exercising their statutory right to representation by an attorney . . . , and 24 exercising the right to be afforded sufficient time to gather and present evidence in their 25 defense, including evidence pertaining to the crucial [less than] two-year continuous 26 physical presence” requirement for expedited removal. (Petition, at 8–9) (“Expedited 27 Removal Orders may only be issued to an individual who is encountered within the interior 28 of the United States away from an international border if certain requirements are met, 1 including the requirement that the individual have been physically present in the United 2 States for less than two years.”) (citing 8 U.S.C. § 1225(b)(1)(A)(iii)(II)). 3 Petitioners argue they are unquestionably protected by the Fifth Amendment as they 4 were contacted in the interior of the United States (not at the international border), citing 5 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all 6 ‘persons’ within the United States, including aliens, whether their presence here is lawful, 7 unlawful, temporary, or permanent.”). (TRO, at 6). Petitioners also argue they are 8 protected by the Fourth Amendment from unlawful detention and arrest. There is no 9 question the Fourth Amendment applies to “the people” of the United States; however, 10 there is debate as to the application of the right to all noncitizens within the United States. 11 See *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (stating text of Fourth 12 Amendment “suggests that ‘the people’ protected by the Fourth Amendment . . . refers to 13 a class of persons who are part of a national community or who have otherwise developed 14 sufficient connection with this country to be considered part of that community.”) (internal 15 citation omitted). 16 Petitioners proffered at oral argument that they have been physically present in the 17 United States for more than two years and that they were unquestionably contacted by 18 Border Patrol “within” the United States. The record before

the Court raises serious 19 questions regarding whether Petitioners' Fourth and Fifth Amendment rights were violated 20 and whether the expedited removal process was improvidently employed by Respondents. 21 If Petitioners are protected by the Fourth Amendment, the investigatory stops alleged 22 here are justified only if there was reasonable suspicion that "criminal activity [was] afoot." 23 *U.S. v. Willis*, 431 F.3d 709, 714 (9th Cir. 2005) (quoting *United States v. Arvizu*, 534 U.S. 24 266, 273 (2002)). "Reasonable suspicion is formed by 'specific, articulable facts which, 25 together with objective and reasonable inferences, form the basis for suspecting that the 26 particular person detained is engaged in criminal activity.'" *U.S. v. Lopez-Soto*, 205 F.3d 27 1101, 1105 (9th Cir. 2000) (quoting *United States v. Michael R.*, 90 F.3d 340, 346 (9th Cir. 28 1 1996)). The Government bears the burden of providing "specific and articulable facts" to 2 support reasonable suspicion. See *Terry v. Ohio*, 392 U.S. 1, 21 (1968). 3 Based on the present record, Petitioners have advanced serious questions regarding 4 whether the Government sufficiently provided "specific and articulable facts" to support a 5 finding of reasonable suspicion. The Government provided near-identical explanations for 6 the detentions of Petitioners Domingo-Ros and Garcia in their respective I-213 Forms. 7 First, the Government notes that when the Agents arrived at the Home Depot staging 8 location they observed "multiple subjects running from within the area." (ECF No. 2-2, at 9 6, 11). The Agents state they "conducted consensual encounters with nine individuals" 10 and determined that they were without legal documentation "allowing them to enter, 11 remain, or travel in the United States." (*Id.*). Two of those nine individuals were 12 Petitioners Domingo-Ros and Garcia. (*Id.*). While "nervous, evasive behavior is a 13 pertinent factor in determining reasonable suspicion," *Illinois v. Wardlow*, 528 U.S. 119, 14 124 (2000), Petitioners' I-213 Forms are notably silent as to whether Petitioners Domingo- 15 Ros and Garcia were among the individuals who attempted to flee. (*Id.*). Further, the I- 16 213 Forms offer sparse explanation as to how the "consensual encounters" allowed the 17 Agents to determine that Petitioners were without status and how the encounters could be 18 consensual if individuals were running away. (*Id.*). In short, the facts set out in the I-213 19 Forms are inadequate to determine if the encounters were consensual and, if not, whether 20 there was reasonable suspicion to justify the detentions. Accordingly, serious questions 21 remain as to whether these encounters were lawful and whether the information obtained 22 was lawfully used against Petitioners. 23 Petitioner Juarez-Cobon's I-213 Form states he "walked away" as an Agent stepped 24 out of his vehicle and "came to a stop on his own accord" once the Agent identified himself. 25 (ECF No. 2-2, at 16). It is unclear if the encounter was consensual or based on reasonable 26 suspicion to briefly detain and ask immigration-related questions. The encounter 27 apparently was cut short by "several hostile individuals from the public" who approached 28 the Agent and recorded his actions. (*Id.*). Accordingly, as with Petitioners Domingo-Ros 1 and Garcia, serious questions remain whether the encounter was consensual and, if not, 2 whether the Agent had reasonable suspicion to detain and briefly question Petitioner 3 Juarez-Cobon. 4 Petitioners have also raised serious questions whether Fifth Amendment procedural 5 due process rights

apply to them and, if so, whether those rights preclude use of the 6 expedited removal process. Respondents argue that while Petitioners were in the interior 7 of the United States, the expedited removal process treats such individuals as “arriving 8 aliens” without procedural due process rights. Respondents cite for authority *Mendoza- 9 Linares v. Garland*, 51 F.4th 1146, 1155 (9th Cir. 2022) (stating jurisdiction-stripping 10 provisions of 8 U.S.C. § 1252(a)(2)(A) cover “the ‘procedures and policies’ that have been 11 adopted to ‘implement’ the expedited removal process; the decision to ‘invoke’ that 12 process in a particular case; the ‘application’ of that process to a particular alien; and the 13 ‘implementation’ and ‘operation’ of any expedited removal order”); *Guerrier v. Garland*, 14 18 F.4th 304, 313 (9th Cir. 2021) (stating Supreme Court abrogated any “colorable 15 constitutional claims” exception to limits placed by § 1252(a)(2)(A)); and *Dep’t of 16 Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–39 (2020) (rejecting Ninth Circuit’s 17 holding that arriving noncitizen has “constitutional right to expedited removal proceedings 18 that conform to the dictates of due process”). However, Respondents elevate a statutory 19 framework over the Constitution and ignore entirely that the foregoing cases all involve 20 apprehension of noncitizens at the international border where procedural due process rights 21 indisputably do not apply to such individuals. Here, Petitioners were contacted by Agents 22 well within the interior of the United States where constitutional protections may apply. 23 Finally, Petitioners have raised serious questions that even if the jurisdiction- 24 stripping provisions apply and § 1252(e)(2) does not provide a jurisdictional basis for 25 Petitioners’ habeas claims, the “colorable constitutional claim” exception provides an 26 independent basis for the Court’s jurisdiction since noncitizens in the interior of the United 27 States, like Petitioners, are entitled to constitutional protections. See *Webster v. Doe*, 486 28 U.S. 592, 603 (1988) (stating a “serious constitutional question . . . would arise if a federal 1 statute were construed to deny any judicial forum for a colorable constitutional claim”) 2 (internal citation omitted). Accordingly, Petitioners have satisfied their burden with 3 respect to the first factor. 4 B. Likelihood of Irreparable Harm 5 Under the second Winter factor, the Court considers whether Petitioners are likely 6 to suffer irreparable harm in the absence of preliminary injunctive relief. 555 U.S. at 20. 7 If Petitioners are removed, they will lose their ability to challenge the removal process to 8 which they have been subjected. As Petitioners note, expedited removal is “significantly 9 different” from a “regular” 8 U.S.C. § 1229a removal because in § 1229a proceedings, “a 10 removed noncitizen can ‘continue to pursue their petitions for review, and those who 11 prevail can be afforded effective relief by facilitation of their return[.]’” (TRO, at 8–9) 12 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). No such right exists to continue to 13 pursue a challenge to an Expedited Removal Order after removal from the United States. 14 See *Doe v. McAleenan*, 415 F.Supp.3d 971, 979 (S.D. Cal. 2019), modified, 2019 WL 15 6605882 (S.D. Cal. Dec. 3, 2019) (noting that “non-reviewable erroneous decision” of 16 removal amounts to irreparable harm); see also *Goldie’s Bookstore, Inc. v. Superior Ct. of 17 State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) (“An alleged constitutional infringement 18 will often alone constitute irreparable harm.”). Therefore, the second Winter factor favors 19

Petitioners. 20 C. Balance of Equities and Public Interest 21 When the Government is a party to a case, the third and fourth Winter factors—the 22 balance of the equities (hardships) and the public interest—merge. See *Drakes Bay Oyster 23 Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken*, 556 U.S. at 435). It would 24 not be ““in the public’s interest to allow the [Government] . . . to violate the requirements 25 of federal law, especially when there are no adequate remedies available.”” *Ariz. Dream 26 Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Melendres v. Arpaio*, 27 695 F.3d 990, 1002 (9th Cir. 2012)). The public interest in enforcement of immigration 28 laws, although significant, does not override the public interest in protecting the safeguards 1 of the Constitution. Accordingly, the third and fourth factors tip sharply in favor of 2 Petitioners and support preliminary injunctive relief. A TRO is warranted under the 3 circumstances.

4 IV. SCOPE

5 Under Federal Rule of Civil Procedure 65(d), every order granting an injunction 6 must “describe in reasonable detail—and not by referring to the complaint or other 7 document—the act or acts restrained or required.” Fed. R. Civ. P. 65(d). “[A]n injunction 8 must be narrowly tailored . . . to remedy only the specific harms shown by the plaintiffs, 9 rather than ‘to enjoin all possible breaches of the law.’” *Price v. City of Stockton*, 390 F.3d 10 1105, 1117 (9th Cir. 2004) (quoting *Zepeda v. INS*, 753 F.2d 719, 728 n.1 (9th Cir. 1983)). 11 Considering the findings above, the Court GRANTS Petitioners’ Application for TRO and 12 prohibits Respondents from removing Petitioners from the United States and relocating 13 Petitioners to a detention facility outside the Southern District of California pending 14 resolution of this litigation. 15 In addition, at the hearing on Friday, May 16, 2025, the Court scheduled an 16 evidentiary hearing on Petitioners’ Fourth Amendment claim for Thursday, May 22, 2025 17 at 9:00 a.m., with an opportunity for the parties to file supplemental briefing by 18 Wednesday, May 21, 2025 by 4:30 p.m. The Court also scheduled a hearing on 19 preliminary injunction for Friday, May 30, 2025 at 1:30 p.m. The parties will meet and 20 confer regarding scheduling and may request a continuance of the dates. 21 The Court also SETS a status conference with the parties on Monday, May 19, 2025 22 at 3:00 p.m. to discuss the scope of the hearing on May 22, 2025, and whether additional 23 briefing should include Petitioners’ Fifth Amendment due process claim and related 24 jurisdictional issues.

25 V. CONCLUSION

26 Based on the foregoing, the Court CONFIRMS its GRANT of Petitioners’ 27 Application for TRO and the dates above. IT IS SO ORDERED. 28 1 || Dated: May 18, 2025 2 2 inn ym. L4\ 3 Hon. Dana M. Sabraw 4 United States District Judge 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28