District Judge John H. Chun
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RIGOBERTO HERNANDEZ HERNANDEZ, Petitioner, v. U.S. BORDER PATROL, *et al.*, Respondents.	Case No. 2:25-cv-01821-JHC-MLP RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER Noted for Consideration: September 15, 2025

I. INTRODUCTION

Petitioner Rigoberto Hernandez Hernandez's motion for a temporary restraining order ("TRO") should be denied. Dkt. No. 2, TRO Mot. In the motion, Hernandez seeks his release from U.S. Immigration and Customs Enforcement ("ICE") custody. This request for relief is moot. Earlier today, U.S. Department of Homeland Security ("DHS") filed a motion to dismiss Hernandez's removal proceedings. In addition, ICE is voluntarily releasing Hernandez from detention today. As a result, Hernandez cannot demonstrate that he meets any of the factors required for the extraordinary remedy of a temporary restraining order. Therefore, the TRO motion should be denied.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

II. RELEVANT FACTS

Petitioner Rigoberto Hernandez Hernandez is a noncitizen who entered the United States without inspection or parole at an unknown place on an unknown date. Dkt. No. 3-1, Notice to Appear. Border Patrol Agents arrested Hernandez on August 27, 2025. TRO Mot., at 9. Border Patrol served him with a Notice to Appear the following day. Dkt. No. 3-1, Notice to Appear, at 2. He was transferred to ICE custody at the Northwest Immigration Processing Center ("NWIPC") that same day. TRO Mot., at 12.

On September 23, 2025, DHS electronically filed a motion to dismiss Hernandez's removal proceedings without prejudice with the immigration court. Lambert Decl., Ex. A, DHS Motion to Dismiss Without Prejudice. ICE will release Hernandez from detention today.[1] Hubbard Decl., ¶ 5.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, and not to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

"A party can obtain a preliminary injunction by showing that (1) [he] is 'likely to succeed on the merits,' (2) [he] is 'likely to suffer irreparable harm in the absence of preliminary relief,'

[1] Respondents will notify the Court after Hernandez has been released.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

(3) 'the balance of equities tips in [his] favor,' and (4) 'an injunction is in the public interest.'" *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter*, 555 U.S. at 20). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Id.* (internal quotation omitted).

IV. ARGUMENT

The Court should deny Hernandez's request for a TRO because he has failed to demonstrate (1) that he will suffer imminent irreparable harm that may only be remedied with immediate injunctive relief or (2) that he will be successful on the merits of his either of his claims.

A. Hernandez is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). To succeed on a habeas petition, a petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241.

Hernandez cannot succeed on his detention claims as ICE is voluntarily releasing him. In the motion, he claims that he is likely to succeed on Claims Eleven (violation of detention authority statutes) and Twelve (due process challenge to his mandatory detention). TRO Mot., at 20-22. For a federal court to have jurisdiction, "an actual controversy must exist at all stages of the litigation." *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9th Cir. 2002). Now that Hernandez is being released from ICE custody, Claims Eleven and Twelve are undoubtedly moot. *See Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007) (petitioner's release from custody rendered habeas claim moot).

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

While Hernandez also raises claims which involve allegations concerning circumstances before his arrest and detention, *see* TRO Mot., at 14-20, those claims are not appropriate for resolution through a habeas petition, especially once Hernandez is no longer detained. The habeas statute allows a petitioner who is "in custody" to challenge that custody on various grounds, 28 U.S.C. §2241(c), including that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2241(c)(3). The statute is written in the present tense, making clear that Section 2241 only allows a petitioner to challenge his current custody, not his past custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("the essence of habeas corpus is an attack by a person *in custody* upon the legality of *that custody*" (emphasis added)). And as described above, as he is being released from custody, the issue of his current custody is moot.

Regardless of whether Hernandez's remaining claims proceed forward in this action, they should be addressed through briefing on the underlying habeas petition, not through a TRO motion.

B. Hernandez cannot demonstrate that he will likely suffer irreparable harm in the absence of a TRO.

Hernandez has not demonstrated that he will suffer irreparable injury absent the emergency injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

entitled to such relief." *Winter*, 555 U.S. at 22.

Hernandez alleges that he "has suffered will likely continue to suffer irreparable harm." TRO Mot.,at 22. Specifically, he points to his detention and possible transfer to another facility "far away from his lawyers, his family, and is support system." Id. But as he is being released from ICE custody, all of these allegations are moot and he cannot demonstrate an immediate threatened injury requiring this Court's intervention.

V. CONCLUSION

DHS has voluntarily moved to dismiss Hernandez's removal proceedings as well as release him from detention. Accordingly, he has not satisfied his high burden of establishing entitlement to injunctive relief, and his Motion should be denied.

DATED this 23rd day of September, 2025.

Respectfully submitted,

TEAL LUTHY MILLER
Acting United States Attorney

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorneys for Respondents

I certify that this memorandum contains 1,153 words, in compliance with the Local Civil Rules.