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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ODILIO MISael ORELLANA
REYES,

Petitioner

VS.

SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents

CASE NO. 3:26-cv-01756-CRB

PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
MOTION FOR PRELIMINARY
INJUNCTION

1 On March 19, 2026, Respondent submitted response to Petitioner's motion for a
2 preliminary injunction. Petitioner is hereby submitting a reply to Respondents' response.

3 First, Respondents failed to comply with the regulation at 8 C.F.R. § 241.8 governing the
4 procedure that ICE must follow before reinstating a noncitizen's prior removal order. In
5 reinstatement proceedings, a DHS officer conducts an interrogation to determine whether an
6 individual has a prior removal order, is in fact the person identified in the prior order, and
7 unlawfully reentered. 8 C.F.R. § 241.8(a). This interrogation usually takes place under oath,
8 resulting in a written sworn statement on Form I-877. In making this determination, the officer
9 "must obtain the prior order." 8 C.F.R. § 241.8(a)(1). Respondents claim that Petitioner was
10 subject to an expedited removal order in 2017 and removed under such order. To date,
11 Respondents have not produced the actual order if one exists and was used in the reinstatement
12 process. Without the underlying removal order, the Petitioner cannot be detained pursuant to 8
13 U.S.C. § 1231(a). Instead, the Petitioner falls under 8 U.S.C. § 1226(a) and is therefore entitled
14 to release.
15

16 Second, the Court should not grant Respondents' request to stricken all named
17 Respondents besides the immediate custodian. As a procedural matter, "a request for affirmative
18 relief is not proper when raised for the first time in an opposition." *See Ortega v. Kaiser*, 2025
19 WL 2243616, at *4 (N.D. Cal. Aug. 6, 2025).
20

21 Furthermore, Courts have recognized that naming additional respondents beyond the
22 immediate custodian may be appropriate so long as the immediate custodian is included. In *Doe*
23 *v. Chestnut*, No. 1:24-CV-00943-EPG-HC, 2025 WL 3240400, at *23 n.1 (E.D. Cal. Nov. 20,
24 2025), the court noted that "Doe did not necessarily preclude naming more than one respondent
25 so long as the immediate custodian is named."

1 Similarly, another court declined to dismiss additional respondents in order to preserve the
2 enforceability of habeas relief, stating: “In light of the foregoing and to ensure that Respondents
3 maintain authority to enforce this Court's grant of habeas relief in the event of a transfer, the
4 Court will not dismiss Acting Director Lyons and Secretary Noem as Respondents to these
5 proceedings.” *Puerto-Hernandez v. Lynch*, No. 1:25-CV-1097, 2025 WL 3012033, at *12 (W.D.
6 Mich. Oct. 28, 2025).

7 More recently, in *Rodriguez Morales v. Chestnut*, No. 1:26-cv-01727-KES-EPG (HC),
8 2026 WL 699220, at *2 (Mar. 12, 2026), the court denied the government’s request to dismiss all
9 respondents other than the immediate custodian. The court reasoned that other respondents were
10 responsible for decisions regarding the petitioner’s re-detention, which constituted a non-core
11 habeas challenge.
12

13 That reasoning applies equally here. Respondents such as Todd Lyons, Sergio Albarran,
14 the Secretary of DHS, and Pamela Bondi have authority over decisions concerning Petitioner’s
15 potential re-detention. Therefore, they are proper respondents in this action and should not be
16 dismissed. *Rodriguez Morales* also rebuts the government’s argument that the immediate
17 custodian can only provide relief for core habeas challenges, because non-core habeas
18 challenges, such as ordering the government to conduct a pre-deprivation hearing, are also
19 appropriate in habeas actions.
20

21 Third, the Court has jurisdiction to enjoin Respondents from removing Petitioner from
22 the United States and transferring Petitioner out of this District. *See F.T.C. v. Dean Foods Co.*,
23 384 U.S. 597, 604 (1966) (noting the court’s “express authority under the All Writs Act to issue
24 such temporary injunctions as may be necessary to protect its own jurisdiction.”).
25

1 Fourth, Respondents contend that a preliminary injunction is improper because it would
2 grant the same ultimate relief sought in the habeas petition. However, the Eastern District has
3 previously issued a decision rejecting the government's position. In *M.V.I. v. Andrews*, No. 1:25-
4 CV-01440-JLT-SKO, 2025 WL 3154403, at *FN 4 (E.D. Ca. November 12, 2025), the Eastern
5 District explained: "But a closer look at *Camenisch* reveals that the Supreme Court did not
6 intend to bar TROs of the kind requested here. Rather, [*University of Texas v. Camenisch*, 451
7 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981)] stands for the proposition that 'findings
8 of fact and conclusions of law made by a court in a preliminary injunction or TRO posture are
9 preliminary and do not bind the court at the trial on the merits. Thus, it is not appropriate to enter
10 a final judgment at a TRO stage.' *Doe v. Noem*, 778 F. Supp. 3d 1151, 1167 (W.D. Wash. 2025)
11 (evaluating government argument based on *Comenisch*).
12

13 For the foregoing reasons, the Court should grant Petitioner's request for a preliminary
14 injunction and order Respondents to immediately release Petitioner from custody to maintain the
15 status quo.

16 Respectfully submitted,

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18 Date: March 24, 2026

19 By: /s/ Connie Chan
20 Connie Chan
21 Attorney for Petitioner
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