TIMOTHY COURCHAINE
United States Attorney
District of Arizona
KATHERINE R. BRANCH
Assistant U.S. Attorney
Arizona State Bar No. 025128
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: 602-514-7500
Facsimile: 602-514-7760
Email: Katherine.Branch@usdoj.gov
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ruslan Makhmudov, Plaintiff, v. Pamela Bondi, et al., Defendants.	No. 2:25-cv-01951-KML--MTM **RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

Defendants hereby respond in opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2) as directed by the Court.

I. Introduction.

Petitioner Ruslan Makhmudov is a citizen of Russia and is currently detained by the United States Department of Homeland Security. Doc. 1 at ¶ 18. As Petitioner acknowledges in his Petition for Writ of Habeas Corpus, Doc. 1 at ¶ 2, he is subject to mandatory detention as an arriving alien. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Petitioner alleges that he suffers from several serious medical issues and that his continued detention violates the Fifth Amendment. Doc. 1 at ¶¶ 52-61. Petitioner seeks an order compelling Defendants to release him from custody and enjoining Defendants from detaining him. Doc. 2 at 4; Doc. 1 at 9.

II. Relevant Legal Standard.

The standard for issuing a temporary restraining order ("TRO") is substantially identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a temporary restraining order or preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result" but is instead an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (citation and internal quotation marks omitted).

The purpose of a TRO is to preserve the status quo before a preliminary injunction hearing may be held. Here, Petitioner does not seek to preserve the status quo until this Court can decide a preliminary injunction, but rather seeks to decide the dispute at its inception via an TRO that mandates his immediate release and enjoins the Government from detaining him. Such relief is especially disfavored. *See Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39 (1974) (noting that TROs "should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer"); *Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (noting that "courts have recognized very few circumstances justifying the issuance of an ex parte TRO"); *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979) ("[m]andatory preliminary relief, which goes well beyond simply maintaining the status quo pendente lite, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party.")

Because Plaintiff seeks a mandatory injunction, the already high standard for granting a TRO is "doubly demanding." *Garcia v. Google, Inc.*,786 F.3d 733, 740 (9th Cir. 2015). Thus, Plaintiff must establish that the law and facts clearly favor his position, not simply that he is likely to succeed. *Id.* Further, a mandatory preliminary injunction will not issue unless extreme or very serious damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022).

III. Argument.

A. Petitioner improperly seeks a judgment on the merits.

By his Motion for Temporary Restraining Order and Preliminary Injunction, Petitioner is not seeking to merely preserve the status quo on a temporary basis. Rather, he seeks an injunction that would alter the status quo by providing him the ultimate relief he seeks in this litigation. As a matter of law, Petitioner is not entitled to what amounts to a judgment on the merits at this preliminary stage. *See Mendez v. U.S. Immigr. & Customs Enf't*, No. 23-cv-00829-TLT, 2023 WL 2604585, at * 3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of State of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992) for the proposition that "judgment on the merits in the guise of preliminary relief is a highly inappropriate relief.").

B. Petitioner cannot establish the requirements for an injunction.

1. Petitioner cannot establish a likelihood of success on the merits.

a. A petition for writ of habeas corpus is an inappropriate vehicle to challenge conditions of confinement.

Petitioner is an arriving alien mandatorily detained under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) pending a final determination of his credible fear claim. Petitioner does not challenge his mandatory detention, but instead filed a petition for writ of habeas corpus alleging that his continued detention in light of his medical issues violates the Fifth

Amendment. The Court lacks jurisdiction over the habeas petition because a petition for writ of habeas corpus is inappropriate in the context of a conditions of confinement claim. *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979) ("[T]he writ of habeas corpus is limited to attacks upon the legality or duration of confinement."). In *Crawford*, the Ninth Circuit held that "release from confinement" was not the appropriate remedy to address the petitioner's claims "alleg[ing] that the terms and conditions of [petitioner's] incarceration constitute[d] cruel and unusual punishment" and "violated his due process rights." *Id.* at 891-92. Such a claim must be brought as a civil rights claim, *Dohner v. Seifert*, 5 F.3d 535 (9th Cir. 1993), that if proven, would be remedied by "a judicially mandated change in conditions and/or an award of damages." *Crawford*, 599 F.2d at 892. *See also Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented" in civil-rights action) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)); *Nettles v. Grounds*, 830 F.3d 922, 934 n.11 (9th Cir. 2016) (Habeas relief is limited to claims that challenge the fact or duration of the prisoner's conviction or sentence or would necessarily result in immediate or speedier release from custody).

Here, Petitioner brings a classic conditions of confinement claim regarding the adequacy of medical care that bears no relation to the lawfulness or duration of his detention. As such, release pursuant to the writ of habeas corpus is not an appropriate remedy. *See Skinner v. Switzer*, 562 U.S. 521, 535 n.13 (2011) ("When a prisoner's claim would not necessarily spell speedier release, that claim does not lie at the core of habeas corpus [.]"); *Shook v. Apker*, 472 F. App'x 702, 702-03 (9th Cir. 2012) (affirming dismissal of petition raising claims of inadequate medical care under habeas). Thus, because Petitioner does not assert any illegality or impermissible duration of confinement, a petition for habeas relief seeking immediate release is inappropriate in the context of Petitioner's conditions of confinement claim and the Court lacks jurisdiction over the habeas petition. *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2 n.1

(S.D. Cal. June 10, 2024) (finding court lacks jurisdiction over habeas petition premised upon an Eighth Amendment claim).

b. Plaintiff cannot establish a likelihood of success on the merits under the Eighth Amendment.

Even if Petitioner was asserting an Eighth Amendment condition of confinement claim—which he is not—he has not demonstrated a likelihood of success on the merits because for cases asserting that the conditions of confinement are so unsafe as to violate the Constitution, a petitioner must show that the precautions taken to prevent harm are "objectively unreasonable," not just that there is a potential risk. *See Kingsley v. Hendrickson*, 576 U.S. 389 (2015). Here, Petitioner alleges that he faces irreparable harm based on "life-threatening medical conditions." Doc. 2 at 3. But Petition has received proper and prompt medical care throughout his detention, including two surgeries at St. Joseph's Hospital and Medical Center in February 2025: the first to repair an aortic aneurism and the second to implant a pacemaker. Doc. 1 at ¶¶ 41, 42; Doc. 1-1 at ECF p. 376. Roughly one week after the pacemaker was implanted, Petitioner presented to the medical unit at FDC complaining of chest pain and shortness of breath. He was transported to Banner Case Grande Medical Center by ambulance and released after a transthorasic echocardiogram was performed, which was read by a cardiologist at St. Joseph's Hospital and Medical Center who determined that no intervention was needed. *See* Doc. 1-1 at ECF pp. 376; 379. Petitioner's medical records reflect that, after several days in the hospital, Petitioner indicated his symptoms had resolved and asked to be discharged. *Id.*

Because Petitioner seeks mandatory affirmative relief, he must submit evidence sufficient to prove that Respondents' actions are "objectively unreasonable." Importantly, that is not a bare negligence standard, much less a strict liability standard. As the Ninth Circuit has explained in the parallel context of pre-trial detainees, "the pre-trial detainee 'must prove more than negligence but less than subjective intent—something akin to reckless disregard.'" *Smith v. Washington*, 781 F. App'x 595, 598 (9th Cir. 2019) (quoting *Castro v. Cnty. of Los Angeles*, 833 F3d. 1060, 1071 (9th Cir. 2016) (en banc)). *Castro* held that the conditions under which a constitutional violation may be established by a pre-trial detainee are as follows:

> (1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
>
> (2) Those conditions put the plaintiff at substantial risk of suffering serious harm;
>
> (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and
>
> (4) By not taking such measures, the defendant caused the plaintiff's injuries.

Castro, 833 F.3d at 1071. These distinct elements cannot be compressed into a simplified test of "could safety possibly be increased in some ideal respect." Moreover, while civil detainees generally retain greater liberty protections than individuals detained under criminal process and are not being punished by their confinement, the Ninth Circuit also clearly held in this context that "[l]egitimate, non-punitive government interests include ensuring a detainee's presence at trial, maintaining jail security, and effective management of a detention facility." *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004). In assessing whether there is a Constitutional violation because of putative reckless disregard of a substantial health risk, when the Government's purpose is facially legitimate and non-punitive (such as here), there must be a *balancing* of the Government's legitimate interest, considering the steps that it has taken to decrease the risk at issue.

Here, Plaintiff has undergone two significant surgeries at a well-respected local hospital while in immigration detention, has received emergent care at a second outside hospital when necessary, and has otherwise received adequate medical care while detained. Although he may wish that he had been at home being cared for by his wife while he underwent these medical procedures, the Government has a legitimate interest in ensuring his presence for removal and has more than satisfied its obligation to provide adequate medical care to Petitioner throughout his mandatory detention. The care provided by the Government is not objectively unreasonable such that Petitioner would be likely to succeed on an Eighth Amendment conditions of confinement claim.

2. Petitioner fails to establish irreparable harm.

A "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent an injunction. *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009); *see also Winter*, 555 U.S. at 22 (rejecting the Ninth Circuit's earlier rule that the "possibility" of irreparable harm, as opposed to its likelihood, was sufficient in some circumstances to justify a preliminary injunction). Conclusory or speculative allegations are not enough to establish a likelihood of irreparable harm. *Herb Reed Enters., LLC v. Florida Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013); *see also Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) ("Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction."); *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (finding irreparable harm not established by statements that "are conclusory and without sufficient support in facts."). Moreover, the threat of injury must be "immediate." *See Caribbean Marine Servs. Co.*, 844 F.2d at 674.

Here, Petitioner argues that his "continued detention is likely to cause his death." Doc. 2 at 3. But again, Petitioner has not presented any evidence of that, and in fact, the evidence attached to the Petition demonstrates that the opposite is true—Petitioner has undergone two cardiac procedures at a well-respected medical center and was immediately transported to a local hospital when he complained of chest pain. Were this action to proceed on the merits, Defendants would show that Petitioner receives the medication prescribed by his cardiologist to manage his conditions, refused the post-operative pain medication prescribed to him, and undergoes regular follow-up appointments with his outside cardiologist. Petitioner's conclusory statement that his continued detention will likely cause his death is speculative and unsupported by the evidence provided by Petitioner himself. Petitioner is not entitled to immediate release from custody (custody that is mandatory by statute) based on a conjectural injury he has not suffered, may never suffer, and is contradicted by Petitioner's own evidence. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) (finding standing based on fear, even one that is reasonable, "improperly waters down the fundamental requirements of Article III.").

3. The public interest favors denying the motion.

Lastly, the public interest factor does not weigh in Petitioner's favor. Even where the Government is the opposing party, courts "cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the applicant's favor." *Nken*, 556 U.S. at 436 (citation and internal quotation marks omitted). Here, the public interest weighs in favor of denying the Motion for Temporary Restraining Order and Preliminary Injunction. "Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). Petitioner is subject to mandatory detention—a fact he does not challenge—and has not demonstrated a likelihood of success on the merits. The public interest lies in the Executive's ability to enforce U.S. immigration laws and to detain those subject to mandatory detention.

C. Petitioner should be required to post a bond in the event relief is granted.

Finally, if the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states "The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added). Here, because Plaintiff is an arriving alien subject to mandatory detention and has been ordered removed, the amount of any bond should be akin to an appearance bond.

V. Conclusion.

For all the above reasons, Defendants request that the Motion for Temporary Restraining Order and Preliminary Injunction be denied and that this matter proceed on the merits.

Respectfully submitted this 12th day of June, 2025.

TIMOTHY COURCHAINE
United States Attorney

District of Arizona

<u>*s/Katherine R. Branch*</u>
KATHERINE R. BRANCH
Assistant United States Attorney