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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

OMID DELKASH,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; et. al,

Respondents.

No. 5:25-cv-01675-HDV-AGR

FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

[*Filed concurrently with* Declaration of Lourdes Palacios]

Honorable Hernán D. Vera
United States District Judge

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I. INTRODUCTION

Petitioner Omid Delkash has a lengthy history of criminal arrests and convictions spanning four decades, beginning just two years after he was given permanent residency status in 1988. Petitioner was repeatedly convicted of felonies including burglary, forgery, and possession of controlled substance without prescription, and in 1998, was charged as deportable. And even as removal proceedings were happening, Petitioner was convicted of more felony offenses. Petitioner was ordered removed, although his removal to Iran was withheld.

Petitioner was not detained or removed at the time of the removal order, and he continued to engage in more criminal acts. Petitioner was convicted of multiple misdemeanors including battery of former spouse, spousal battery, reckless driving, and public fighting from 2001 to 2018. He was convicted for driving while his license was suspended, and in 2018 served jail time for selling controlled substances without a permit and destroying or concealing evidence thereof. Most recently, on April 23, 2025, Petitioner was arrested for violation of a domestic violence restraining order.

Based on his countless convictions and final order of removal, and his apparent pattern of repeated criminal acts without remorse, ICE arrested and detained Petitioner in June 2025. A preliminary injunction against his detainment and removal to a third country should certainly not be granted, as Petitioner is very unlikely to succeed on the merits, and the balance of harms weighs heavily against him. An immigration judge has already ordered Petitioner removed, and the prior failure to do so has resulted in decades of continuous criminal activity; granting the preliminary injunction would continue to expose the public to such criminal conduct, without any legal basis or jurisdiction.

Furthermore, there is no jurisdiction in District Court to challenge the lawfulness of such a removal or its execution. 8 U.S.C. § 1252(g) provides that for "Judicial review of orders of removal":

Except as provided in this section and notwithstanding any other provision

> of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Here, Petitioner cannot invoke District Court jurisdiction to challenge his lawful detention pending his removal pursuant to a final removal order.

II. STATEMENT OF FACTS

Petitioner Delkash is a native and citizen of Iran. Declaration of Lourdes Palacios ("Palacios Decl."), ¶ 4. He was adjusted to lawful permanent resident in 1988. *Id.*

On August 8, 1990, Petitioner was convicted for the offense of Forgery. *Id.*, ¶ 5. On October 3, 1996, Petitioner was again convicted for felony offenses: Three counts of Possession of Completed Check with Intent to Defraud, in violation of CPC §475(a) with a three-year sentence on one count and an eight-month sentence for each remaining count; Burglary, in violation of CPC §§459/460(b)/461.2; Two counts of Burglary, 2nd degree, in violation of CPC §459; and Receiving Stolen Property, in violation of CPC §496(a) with an eight-month sentence. *Id.*, ¶ 6. Then, on December 20, 1996, Petitioner was convicted for even more felony offenses: Fictitious Drivers License to Facilitate Forgery, in violation of CPC §470a with a three-year sentence; Acquire the Access Code of Another with Intent to Use it Fraudulently, in violation of CPC §484e; Forge Name: Access Card etc., in violation of CPC §484f(2) with an eight-month sentence; and Fraudulent Use of Another's Access Card, in violation of CPC §484g with an eight-month sentence. *Id.*, ¶ 7. Later on August 7, 1996, Petitioner was convicted of the offense of Possession of Controlled Substance without Prescription. *Id.*, ¶ 8.

On May 6, 1998, the former Immigration and Naturalization Service (INS) issued a Notice to Appear (NTA) and served it on Petitioner. *Id.*, ¶ 9. Petitioner was charged as being deportable under INA §§ 237(a)(2)(A)(ii); 237(a)(2)(A)(iii) to wit, 101(a)(43)(F),

(G), and (R); and 237(a)(2)(B)(i). *Id.* While in these removal proceedings, Petitioner was convicted of even more crimes in May 1996. Under Case # 98CF2726 he was convicted of the felony offense of Attempted Possession of a Narcotic Controlled Substance (Cocaine), with a sentence of one year in prison. *Id.*, ¶ 10. Under Case # 99HF0330 he was convicted and received two years for Unlawful Taking of Vehicle and Evading While Driving Recklessly. *Id.*, ¶ 11. Under Case # 99HF0371 Petitioner was convicted of the following felony offenses with a term of two years sentence each: Two counts of Forgery and Two counts of Burglary, 2nd Degree – Commercial Structure. *Id.*, ¶ 12.

On January 17, 2001, the immigration judge ordered Petitioner removed but withheld his removal to Iran under INA Section 241(b)(3) (Withholding of Removal). *Id.*, ¶ 13. Petitioner did not appeal the decision. *Id.*

Following the order of removal, Petitioner continued on his criminal activities. On July 30, 2001, Petitioner was convicted of the misdemeanor offense of Permit Alcohol Consumption After Hours. *Id.*, ¶ 15. On April 22, 2004, Petitioner was convicted of the misdemeanor of Battery: Non-cohabitant Former Spouse. *Id.*, ¶ 16. On October 4, 2005 Petitioner was convicted of the misdemeanor offense of Fight/Challenge Fight Public Place. *Id.*, ¶ 17. On November 13, 2006, Petitioner was convicted of the misdemeanor offense of Driving While License Suspended. *Id.*, ¶ 18. On December 14, 2006, Petitioner was convicted of misdemeanor again, of Spousal battery and Damage/Use/Etc Power Lines. *Id.*, ¶ 19. Petitioner further committed probation violations and/or sentence modifications and/or probation extensions in 2008, 2010, and 2011 for these misdemeanors. *Id.* On August 25, 2008, Petitioner was convicted of the misdemeanor offense of Driving While License Suspended. *Id.*, ¶ 20.

On August 13, 2010, Petitioner was convicted of the misdemeanor of Reckless Driving: Highway. *Id.*, ¶ 21. On August 15, 2013, Petitioner was convicted of the misdemeanor offense of Driving While License Suspended. *Id.*, ¶ 22. On September 26, 2018, Petitioner was convicted for the misdemeanor offense of Infliction of Corporal Injury. *Id.*, ¶ 23. In a separate case on September 26, 2018, Petitioner was convicted for

the following misdemeanor offenses with a sentence of 18 days in jail: Five counts of Transportation/Sale/Furnishing Marijuana, Maintaining Place for Selling or Using Controlled Substance; Possession of Marijuana for Sale; Doing Business without Valid License; Destroying or Concealing Evidence; and Engaging in Business as a Seller Without Permit. *Id.*, ¶ 24.

On or about April 23, 2025 Petitioner was arrested for violation of a Domestic Violence Restraining Order. *Id.*, ¶ 25. Based on Petitioner's lengthy history of arrests and criminal convictions, and the immigration judge's order of removal, ICE determined that Petitioner was subject to arrest. *Id.*, ¶ 26. Petitioner was advised that there was an arrest warrant for Petitioner for violation of immigration law, and arrested on June 24, 2025. *Id.*, ¶ 31. Petitioner is currently in custody at the Adelanto ICE Processing Center. *Id.*, ¶ 32.

III. LEGAL STANDARD FOR PRELIMINARY INJUNCTIONS

"[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 citation omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21–22 (2008). To meet that showing, the moving party must make "a clear showing" that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 21–22. Where the government is a party, the balance of equities and the public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"A preliminary injunction can take two forms." *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.,* 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Id.* (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir. 1988)). In contrast, a "mandatory injunction 'orders a responsible party to take action.'" *Id.* at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484

(1996)). "A mandatory injunction 'goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)). To this end, where "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984); *Comm. of Cent. Am. Refugees v. Immigr. & Naturalization Serv.*, 795 F.2d 1434, 1441 (9th Cir. 1986) (same). For mandatory preliminary relief to be granted, Plaintiffs "must establish that the law and facts *clearly favor* [thei]r position ...." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (*en banc*) (emphasis in original); *see also Marlyn Nutraceuticals*, 571 F.3d at 879 ("In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in doubtful cases ....'") (quoting *Anderson*, 612 F.2d at 1115).

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A TRO or PI is intended to preserve the status quo until the case can be judged on the merits. The status quo is that Petitioner is detained. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

IV. PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED.

A. Petitioner Fails to Establish a Likelihood of Success on the Merits of His Habeas Petition.

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 [elements].'" *Garcia*, 786 F.3d at 740 (*en banc*) (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)).

Here, with a valid final order of removal and no evidence of naturalization or lawful status, ICE may re-detain under 8 U.S.C. § 1231 (a)(6), for post-removal-period

detention, as well as under 8 U.S.C. §1357 (a), general immigration enforcement authority. Petitioner has failed to establish a likelihood of success on the merits.

1. Petitioner Fails to Present Sufficient Evidence to Establish a Likelihood of Success on His Claims That He May Not Be Subjected To Detention Pending Removal

Petitioner acknowledges that he has previously been subject to mandatory detention (due to his criminal record) but was released. Petitioner also states that he was not released under an order of supervision. In other words, Petitioner claims that he should be permanently free from detention because the government did not detain him even earlier.

As an initial matter, there is no jurisdiction to contest the government's decision to detain Petitioner pending his removal pursuant to a final removal order. 8 U.S.C. § 1252(g) provides that for "Judicial review of orders of removal":

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Congress specifically exempted challenges of the sort that Petitioner now attempts to raise from being subjected to review in District Court.

Even if the detention decision were reviewable in District Court, the INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6).

8 U.S.C. § 1231 (a)(6) provides that an alien ordered removed who is inadmissible under section 1182, removable under 1227(a)(1)(C), (a)(2), or (a)(4), or who has been determined to be a risk to the community or unlikely to comply with the order of removal "may be detained beyond the removal period." That Petitioner was released without an order of supervision does nothing to negate this authority to detain Petitioner, as his original order of removal remains in full effect. Petitioner knows exactly why he was ordered removed—his criminal activities—and he has continued that serious criminal behavior since, including as recently as April this year.

Petitioner had ample due process available to him back when he was ordered removed. He chose not to appeal the removal order using the available processes. Nor does he identify any basis under which he could have contested being found removable anyways. Mandatory detention of aliens found subject to removal does not violate due process rights, where they have exhausted their administrative remedies and have been ordered removed. *See Sulaiman v. Att'y Gen.*, 212 F. Supp. 2d 413 (E.D. Pa. 2002), aff'd sub nom. *Sulaiman v. Ashcroft*, 64 F. App'x 851 (3d Cir. 2003). Under 8 U.S.C. § 1226(c), aliens with certain criminal convictions must be detained by ICE. *See* 8 U.S.C. § 1226(c) ("the Attorney General shall take into custody any alien who" is inadmissible or deportable under select grounds.). For example, mandatory detention may apply to aliens (like Plaintiff) who have been convicted of crimes of moral turpitude, aggravated felonies, or drug offenses.

Finally, Petitioner is unlikely to succeed on his merits because even following his order of removal, he has engaged in decades more of criminal activity. Petitioner's continued detention serves the legitimate governmental purpose of protecting the public.

2. Petitioner Has Failed to Present Sufficient Evidence to Establish a Likelihood of Success on His Claim That He May Not Be Removed

Petitioner does not identify any basis for contesting his removal from the United States. As discussed above, claims contesting removal are generally barred by 8 U.S.C. § 1252(g), which permits the government to enforce final removal orders without judicial

review except in certain narrowly delimited circumstances not present here. To the extent a non-citizen wishes to contest such final removal orders, they have extensive legal process available—just not a District Court lawsuit.

As Petitioner acknowledges, his removal was previously withheld with respect to Iran only. Pursuant to his current detention and final removal order, Petitioner may be removed to a third country that is not Iran. Petitioner states that he fears that he will not be given *any* notice about such a third country, per an online article from a non-government website, and argues that he has due process rights relative to getting notice for that, but at the same time has confirmed that ICE indicated to his counsel that Petitioner has not been given notice *because* the third country has not yet been identified. This speculation about lack of notice in the future does not suffice to establish a likelihood of success on the merits. Much less would insufficient notice establish that being freed from detention or barring removal would be the appropriate remedy. To the contrary, that would be barred by Section 1252(g).

B. Petitioner Fails to Establish That He Will Likely Suffer Irreparable Harm Absent the Issuance of a Preliminary Injunction.

To satisfy this factor, a noncitizen must demonstrate "a particularized, irreparable harm beyond mere removal." *Nken v. Holder*, 556 U.S. 418, 438 (2009) (Kennedy, J., concurring) (emphasis added). Notably, a "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent an injunction. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Here, Petitioner has submitted no evidence suggesting that any irreparable injury is likely to occur if he remains in the current detention conditions. Petitioner bears a heavy burden to prove the likelihood of future irreparable injury, and the evidence proffered does not satisfy it. *See, e.g., Winter*, 555 U.S. at 22; *see also Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

Although Petitioner's Motion discusses the conditions at the temporary locations Petitioner was housed for five days following arrest, Petitioner admits that he is now at Adelanto, where he states he was able to take a shower and received a bunk. Petitioner's

Motion at 5. Unlike with respect to the temporary locations, Petitioner's Motion does not provide much detail about the conditions at Adelanto. Petitioner simply states that his mental health and physical health are being harmed due to purported denial of sufficient medical treatment including Ambien for sleep. Petitioner states he has not seen a doctor after losing feeling in two of his fingers, but he does not state whether he has made a request to see a doctor. Petitioner has been at Adelanto since June 30, 2025, and the Motion for Preliminary Injunction is dated July 15, 2025. The Motion does not state when in those two weeks of detention at Adelanto Petitioner began complaining about his physical conditions, nor what the response by Adelanto was.

In any event, the issue is not relevant because complaints about conditions of confinement cannot be resolved by a habeas petition, as they do not fall within habeas jurisdiction. *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) (no habeas jurisdiction based on complaints about conditions of confinement).

Nor does Petitioner's Motion establish that he will likely suffer irreparable harm from removal to a specific third country (as opposed to the more general harms inherent in removal, which the Petitioner cannot avoid due to his removable status per a final removal order). As Petitioner acknowledges, the third country that he may be removed to has not even been identified.

Accordingly, Petitioner has not met his heavy burden to show that he will likely suffer irreparable harm in the absence of a preliminary injunction being issued.

C. The Balance of Equities and Public Interest Supports Denial of a Preliminary Injunction.

The final two factors required for a preliminary injunction—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See, e.g., Nken, supra*, at 435. Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest tip strongly in favor of the Respondents.

The public interest in enforcement of United States immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant."). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to the Defendants and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Here, Petitioner's requested relief would interfere with Respondents' enforcement of immigration laws without proper justification. Indeed, Congress granted the government authority to detain noncitizens when—like Petitioner, a convicted felon—they commit awful crimes. The United States properly segregates such serious violent criminals from the general population pending their removal, and granting an injunction would thus impose irreparable injury on the Respondents. Already, the failure to previously remove Petitioner has resulted in his imposition of continual serious criminal activity, including as recently as April 2025. Accordingly, the balance of equities and the public interest tip in favor of Respondents.

D. Petitioner's Notice of Supplemental Authorities Does Not Support Petitioner's Motion

On July 23, 2025, Petitioner filed a "Notice of Supplemental Authorities." Dkt. 10. The cases cited, however, are not controlling authorities for this district, as they are neither Ninth Circuit cases nor Central District of California cases. And, in any event, they are distinguishable because they all involved the agency's procedure for revocation of release under an order of supervision issued by an Immigration Judge, which is not Petitioner's situation here.

In *QUOC CHI HOAC, Petitioner, v. MOISES BECERRA, et al., Respondents.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025), the

Eastern District found that the petitioner had showed likelihood of success on his claims because the respondents had not properly revoked his release, where the petitioner had been released *under an order of supervision*. As Petitioner acknowledges, however, Petitioner here was not released under an order of supervision. There was no order that needed to be revoked pursuant to any procedure.

Petitioner's Notice then cites another case by the same judge, which was issued the same day and has verbatim the same language as *Quoc Chi Hoac*: *PHONG PHAN, Petitioner, v. MOISES BECCERRA, Respondent*., No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *2 (E.D. Cal. July 16, 2025). Again, the case concerned a petitioner who had been released under an order of supervision, and is inapplicable here.

Petitioner's Notice then makes a brief reference to a Northern District of California case *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025). There, an alien had to been released after a hearing before an IJ based on a determination that he did not pose a risk of flight or danger to the community—a finding that has *not* been made here. Petitioner's Notice claims that the case is cited because it "establishes that relief is warranted under the *Matthews v. Eldridge* test"—a 1976 Supreme Court decision *to which Petitioner's Motion does not make a single reference*. *See* Dkt. 8. The citation to *Guillermo M.R.* is an improper attempt to add a new argument to Plaintiff's Motion, the day before Respondents' opposition is due, under the guise of a supplemental authority. But in any event, in *Guillermo M.R.*, the court found that the petitioner had established a serious question by identifying a strong liberty interest in *remaining on conditional release from detention*—which Petitioner here was not—and the "limited nature" of the government interest in detaining petitioner. *Guillermo M. R. v. Kaiser*, 2025 WL 1983677 at *4. Indeed, the government interest was limited for Guillermo M.R., who had been "granted release by a neutral third-party IJ after a hearing, and has been free on bond" and had "completed all requirements of his criminal sentence from 2013"—which is 12 years ago. *Id.* Meanwhile, Plaintiff is a repeatedly convicted felon who was arrested as recently as

April 2025 for violating a domestic abuse restraining order, and who was certainly not granted release by an IJ nor out on bond. The government interest in detaining Petitioner is far greater in this case.

V. CONCLUSION

For all the above reasons, the Respondents respectfully request that Petitioner's Motion for Preliminary Injunction be denied.

Respectfully submitted,

Dated: July 24, 2025

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for the Respondents, certifies that the memorandum of points and authorities complies with the word limit of L.R. 11-6.1.

Dated: July 24, 2025

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