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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Hugo Gil Candido-Bolanos,

Petitioner,

v.

John Mattos, Todd M. Lyons, and Kristi Noem,

Respondents.

Case No. 2:25-cv-1359-RFB-EJY

Response to Motion for Preliminary Injunction, ECF No. 25.

I. Introduction

Respondents, John Mattos, Warden of the Nevada Southern Detention Facility; Kristi Noem, Secretary of the U.S. Department of Homeland Security; and Todd M. Lyons, U.S. Immigration and Customs Enforcement (ICE), through counsel, Sigal Chattah, Acting United States Attorney for the District of Nevada, and Summer A. Johnson, Assistant United States Attorney, hereby file this response to Petitioner's Motion for Preliminary Injunction.

As explained herein, Petitioner cannot meet the demanding standard for preliminary injunctive relief. He has already been released from detention, received notice of DHS's intent to remove him to Mexico, and was afforded a screening by USCIS—attended by counsel—that concluded he did not establish eligibility for protection under 8 U.S.C. § 1231(b)(3) or the Convention Against Torture. Petitioner has since filed a motion

to reopen and a motion to stay before the immigration court, which remain pending, and this Court has temporarily enjoined his removal until October 9, 2025. In these circumstances, Petitioner cannot show either a likelihood of success on the merits or irreparable harm. Moreover, the balance of equities and the public interest weigh decisively against further injunction, as granting such relief would disrupt the orderly administration of the immigration system and unduly restrict the discretion of the Executive Branch. Accordingly, Petitioner's motion for a preliminary injunction should be denied.

II. Factual Background

Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus on July 25, 2025. ECF No. 1. Petitioner also sought a temporary restraining order requesting the deferral of removal of the Petitioner to El Salvador. ECF No. 2. Following additional submissions, the court denied Petitioner's motion for temporary restraining order without prejudice. ECF No. 11. The court ordered the Respondents to file a response to the Petition for Writ of Habeas Corpus by August 10, 2025, to which the Respondents complied. ECF Nos. 11, 12. The court granted Petitioner's Petition for Writ of Habeas Corpus, and the Petitioner was released from detention on September 18, 2025. ECF No. 19, 21.

Petitioner was served with a Notice of Removal to a Third County, which was filed with the Court on September 4, 2025. In response, the Court ordered the Respondents to provide a status update regarding whether Petitioner was scheduled for removal to Mexico and whether Petitioner was scheduled for a hearing where he could challenge his removal. ECF No. 20. In response, Respondents provided a status update and a supplemental update to its status update on September 19, 2025. ECF Nos. 22, 24. The supplemental update notified the Court that the Petitioner was screened to determine his eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT) if removed to Mexico. The screening concluded that Petitioner did not establish that it is more likely than not that he will be persecuted or tortured in Mexico. ECF No. 24. It further notified the Court and Counsel that Petitioner would be

removed to Mexico no earlier than September 27, 2025, absent any protective filings by Petitioner. *Id.*

On September 25, 2025, Petitioner filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction Against Removal To An Undesignated Third Country. ECF No. 25. Therein, Petitioner sought "an emergency order enjoining Respondents from effectuating the removal of Petitioner to an undesignated third country, Mexico, without the opportunity for a ruling on his motion to reopen to the immigration court after a negative 'third party screening' determination." *Id.* The Court entered an order granting Petitioner's motion for a temporary restraining order, restraining Petitioner's removal from the District of Nevada until October 9, 2025. The Court further ordered the Federal Respondents to respond to the Motion for Preliminary Injunction by October 1, 2025[1] and to "provide all records relating to Mr. Candido Bolanos's eligibility screening for deferral of removal to Mexico." ECF No. 26. Federal Respondents filed the required documents, subject to a motion permitting the documents to be filed under seal. ECF No. 30. On September 25, 2025, Petitioner filed 1) a Motion to Stay his Removal Proceeding and; 2) Motion to Reopen his Removal Proceedings. *See* ECF No. 28. To date the Immigration Judge has not ruled on either.

III. Argument

In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a preliminary injunction, a plaintiff must "establish 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 v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009).

[1] The Court has granted Federal Respondents and Petitioner an additional 24 hours to file its Response and Reply. See ECF Nos. 29, 30.

Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [Winter factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief — balancing of the harm to the opposing party and the public interest — merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. Of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the moving party's favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

A. Petitioner is Not Likely to Succeed on the Merits of His Claims Because Petitioner Has Been Afforded Due Process to Contest His Third Country Removal as ICE Has Followed Its Procedural Guidance

On July 9, 2025, ICE issued a memorandum updating agency officials on its policy regarding third country removals. That policy states:

Effective immediately, when seeking to remove an [noncitizen] with a final order of removal—other than an expedited removal order under Section 235(b) of the Immigration and National Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, Guidance Regarding Third Country Removals.[2] A 'third country' or 'alternative country' refers to a country other than that specifically referenced in the order of removal. If the United States has received diplomatic assurances from the country of removal that aliens

[2] https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf

removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances.

In "all other cases" ICE must comply with the following procedures:

• An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.

• ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.

• ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.

  ○ Any determination to execute a removal order under exigent circumstances less, than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

• If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.

  ○ If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.

- USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
- If USCIS determines that the alien has not met this standard, the alien will be removed.
- If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Here, Petitioner was served with a Notice of Removal to a Third Country on or about September 4, 2025, advising him of DHS's intent to remove him to Mexico. *See* ECF No. 18. Through counsel, Petitioner asserted a fear of persecution or torture if removed to Mexico. Consistent with agency policy, Petitioner was referred to USCIS for a protection screening under section 241(b)(3) of the INA and the Convention Against Torture, which was conducted on September 12, 2025, with his attorney participating by telephone. *See* ECF No. 24. USCIS determined that Petitioner did not establish that it is more likely than not that he would be persecuted or tortured in Mexico. *Id.* On September 19, 2025, the Court and counsel were advised of this result and notified that Petitioner would not be removed to Mexico prior to September 27, 2025, absent protective filings by Petitioner. *Id.*

Since the initial notice of intended removal, more than five weeks have elapsed. During this time, Petitioner was able to raise a claim for protection, undergo a full screening,

and receive advance notice of the results. Following USCIS's negative determination, Petitioner was given an additional eight days prior to removal, during which he successfully filed both a Motion to Stay and a Motion to Reopen his removal proceedings—motions that remain pending before the Immigration Judge. In addition, this Court has afforded him a further 12 days of protection from removal, until October 9, 2025, during which the Immigration Judge may rule on his motions. These procedural safeguards confirm that Petitioner has been afforded ample due process.

The Ninth Circuit has held that, in the context of third-country removals, the agency must provide notice and an opportunity to reopen for adjudication of withholding claims. *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014). That requirement has been satisfied here: Petitioner has notice, has exercised his right to seek reopening, and his motions are under review. As the regulations make clear, however, the mere filing of a motion to reopen or reconsider does not automatically stay removal. *See* 8 C.F.R. § 1003.23(b)(1)(v). Execution of the removal order may proceed unless and until a stay is granted by the immigration judge, the Board, or DHS.

Accordingly, Petitioner's due process rights have been fully respected, and he cannot demonstrate the extraordinary circumstances required to justify further injunctive relief.

B. Petitioner Will Not Be Irreparably Harmed

Petitioner cannot demonstrate irreparable harm absent preliminary injunctive relief. First, the Ninth Circuit has emphasized that speculative or self-inflicted harms do not satisfy the stringent standard of "irreparable injury" required for extraordinary relief. *See Winter*, 555 U.S. at 22; *Leiva-Perez*, 640 F.3d at 968. Here, Petitioner has already been released from immigration detention, thereby eliminating any alleged harm associated with confinement. The claimed injury now rests only on the prospect of removal to Mexico—a process that has been subject to the above procedural safeguards.

Moreover, Petitioner has filed both a motion to reopen and a motion to stay with the immigration court, which remain pending. The immigration court possesses full authority to consider those filings and grant relief if warranted. Importantly, the regulations explicitly provide

that such filings do not, in themselves, stay removal proceedings. 8 C.F.R. § 1003.23(b)(1)(v). Thus, Petitioner's position is not that he faces an unlawful deprivation of rights, but rather that he seeks to extend removal protections beyond what the statute and regulations provide. That circumstance does not amount to irreparable harm; it merely reflects disagreement with the outcome of his prior screening.

In short, Petitioner has not established that removal to Mexico—after having undergone full screening procedures, with pending motions before the immigration court, and subject to the Court's temporary restraining order—would cause irreparable harm. Courts have consistently recognized that the possibility of removal, standing alone, does not constitute irreparable injury where due process has been provided and avenues for further relief remain open. *See Nken*, 556 U.S. at 435 ("[T]he burden of removal alone is insufficient to constitute irreparable injury."). Accordingly, Petitioner fails to satisfy the irreparable harm requirement, and his motion for preliminary injunction should be denied.

C. Factors three and four also weigh against Petitioner.

When "the government is a party, [courts] consider the balance of the equities and the public interest together." *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018). And "[i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). Here, an adverse decision would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws" by requiring "the Court to severely restrict the discretion of the Attorney General." *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined."). The public has an interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the

rules that are the subject of this appeal."). As with the irreparable harm analysis, the "determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits of the [constitutional] challenge." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), overruled on other grounds by *Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 685, 690 (8th Cir. 2012). While it is "always in the public interest to protect constitutional rights," *id.*, when, as here, Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. See *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Accordingly, Petitioner has not established that he merits a preliminary injunction, and the Court should deny this request.

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's Motion for Preliminary Injunction.

Respectfully submitted this 2nd day of October, 2025.

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/s/ Summer A. Johnson
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