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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE ANGEL GIRON RODAS,

Petitioner,

v.

TODD LYONS, Acting Director, Immigration and Customs Enforcement; GREGORY J. ARCHAMBEAULT, San Diego Field Office Director, Immigration and Customs Enforcement Removal Operations; CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center,

Respondents.

Case No.: 25cv1912-LL(AHG)

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Hearing Date: August 1, 2025
Time: 11:30 a.m.
Judge: Hon. Linda Lopez

I. Introduction

Petitioner Angel Giron Rodas (Petitioner) seeks habeas relief for alleged violation of his Fifth Amendment due process rights, based on his allegation that the Otay Mesa Detention Center (OMDC) is failing to provide him with adequate medical care for a life-threatening illness. As an initial matter, the Court lacks subject matter jurisdiction because Petitioner's conditions-of-confinement claim does not form a basis for relief under 28 U.S.C. § 2241. But even if the Court has jurisdiction under § 2241, Petitioner has failed to demonstrate he is entitled to a temporary restraining order (TRO) granting his release from custody. Petitioner's claims regarding the inadequacy of his care while at OMDC is refuted by the accompanying declaration of Dr. Rae Patterson, a Clinical Director at OMDC with over 20 years of clinical practice in internal medicine. The Court should accordingly deny the Petitioner's request for a TRO.

II. Factual and Procedural Background

Petitioner is a 45-year-old national and citizen of Guatemala. On May 23, 2024, he was encountered by Border Patrol Agents and charged with transporting illegal aliens in violation of 8 U.S.C. § 1324. *See* Case No. 24cr1298-RBM. Petitioner pled guilty to the offense and on or about January 13, 2025, after having been in federal custody for almost 8 months, the court sentenced Petitioner to time served. Thereafter, Petitioner was transferred to OMDC where he remains detained pending removal proceedings. His conviction for 8 U.S.C. § 1324(a)(1)(A)(ii) constitutes an aggravated felony, such that his detention is mandatory. *See* 8 U.S.C. §§ 1101(a)(43)(N) and 1226(c).

Upon his arrival at OMDC on or around January 28, 2025,[1] Petitioner told medical providers he had a history of diagnosis of colon cancer and that he suffered from hemorrhoids. Declaration of Dr. Rae Patterson, M.D. ("Dr. Patterson Decl."), ¶¶ 9-

[1] Petitioner was also housed at OMDC in USMS custody during the pendency of his criminal case beginning in June of 2024. Because Petitioner has not raised an issue regarding care during that earlier period, discussion of the records at this point is limited to those beginning in January of 2025 when he was in ICE custody.

10. Records from OMDC reflect the first complaint by Petitioner regarding episodes of rectal bleeding was on March 20, 2025. At that time, Petitioner again self-reported that he had been previously diagnosed with colon cancer. Dr. Patterson Decl., ¶ 13. Petitioner was seen again on March 21, 2025, for complaints of chest pain, back pain, and hemorrhoids. An EKG and ECG were both completed and were normal. Dr. Patterson Decl., ¶ 14. On March 28, 2025, medical personnel requested that Petitioner sign a release authorizing OMDC to obtain his prior records from Kaiser, but he refused. Dr. Patterson Decl., ¶ 15.

On April 17, 2025, Petitioner was seen by a medical doctor for complaints of chronic constipation and hemorrhoids. Petitioner indicated he was still trying to get medical records relating to his possible diagnosis of colon cancer. The physician again asked Petitioner to fill out and sign a record release, but Petitioner again refused. Dr. Patterson Decl., ¶ 16. On May 15, 2025, OMDC submitted a request to ICE to approve Petitioner for an off-site specialty consultation for a colonoscopy to rule out other serious diseases or medical issues. Upon approval of that request, Petitioner was scheduled for an appointment based on the availability of the outside provider. Dr. Patterson Decl., ¶ 17.

On May 22, 2025, Petitioner provided OMDC with authorization to obtain his prior records from Kaiser. Dr. Patterson Decl., ¶ 18. Dr. Patterson has reviewed the records obtained by OMDC from Kaiser Permanente from April of 2024. Those records do not contain any diagnosis of colon cancer. Dr. Patterson Decl., ¶ 6. His April 14, 2024, discharge diagnoses were limited to: (1) chest pain, (2) anemia, (3) lower gastrointestinal hemorrhage, and (4) lymphadenopathy, which is simply swelling of the lymph nodes. Lymphadenopathy is most often caused by infections or a condition that affects the immune system and usually clears up as the body heals. This is because lymph nodes work as filters to remove germs, dead and damaged cells, and other waste from the body, and swelling usually is an indication that those normal processes are functioning. Swollen lymph nodes can also result from severe allergies, ongoing stress,

rheumatoid arthritis, and, rarely, cancer, and his discharge paperwork noted all possibilities. His discharge paperwork included a recommendation that he schedule a colonoscopy. Dr. Patterson Decl., ¶ 6.

Petitioner did not make any further complaints relating to rectal bleeding until June 16, 2025. At that time, records reflect Petitioner told the physician's assistant he had been diagnosed with colon cancer in April of 2023 [sic], and had blood in his stool for about 10 years. He also complained of constipation and hemorrhoids. The medical provider offered to send Petitioner to the emergency room for evaluation and treatment at that time, but Petitioner refused. The medical provider ordered medication for Petitioner's hemorrhoids and constipation and noted that a referral for colonoscopy had already been made, and his appointment was pending. Dr. Patterson Decl., ¶ 19.

On July 6, 2025, Petitioner was transported to Sharp Hospital Emergency Room based on his complaints of rectal bleeding. *Id.*, ¶ 12. A CT scan was performed of Petitioner's abdomen and pelvis and there were no significant findings and, specifically, no findings of metastasis. The CT noted that Petitioner's abdominopelvic lymph nodes were normal, indicating that the lymphadenopathy observed at Kaiser Permanente in April of 2024, as mentioned in Petitioner's Petition and TRO, had resolved. Dr. Patterson Decl., ¶ 20. Labs were also performed with no significant findings. Petitioner was, therefore, discharged for return to OMDC. Upon return to OMDC, Petitioner was seen by a medical provider before being discharged back into general population. *Id.*

On July 15, 2025, Dr. Patterson directed that Petitioner be moved to the medical housing unit (MHU) for observation because of his continued complaints of rectal bleeding. Housing Petitioner in the MHU provides medical staff the ability to closely monitor for any changes in vital signs and allows Petitioner access to emergency medical care if needed. Dr. Patterson Decl., ¶ 21. He is scheduled to have a colonoscopy at an outside contract medical provider within the coming month. Notwithstanding multiple efforts by medical records clerks at OMDC to obtain an earlier procedure date, the outside contract facility has no availability. Petitioner is, however, on a cancellation

list in the event an opening becomes available. Dr. Patterson Decl., ¶ 24. Petitioner cannot simply be scheduled for a colonoscopy at another medical provider given that the federal government contracts with specific providers for medical care to ICE detainees. Dr. Patterson Decl., ¶ 25.

On July 26, 2025, a Nurse Practitioner who made routine rounds on Petitioner noted he was in no apparent distress and had a normal physical examination. Petitioner also requested to go back to general population. The records, again, reflect that Petitioner has already been referred and approved for a colonoscopy. Dr. Patterson Decl., ¶ 22. During his time at OMDC, including in the last two weeks since he has been housed in the MHU, Petitioner's vital signs have been stable and within normal limits. Dr. Patterson Decl., ¶ 26. His weight has likewise remained stable, ranging from 210 pounds at intake to 212 pounds at present. Dr. Patterson Decl., ¶ 27. Petitioner eats the three meals a day he is provided and orders and consumes snacks from the commissary. *Id.* Petitioner's stool has been checked frequently during his time in MHU, and he has had only intermittent episodes of bloody stool, which have relatively minimal amounts of blood loss. Dr. Patterson Decl., ¶ 29. Bloody stool can be caused by a wide range of underlying issues and are not necessarily serious. *Id.*

Blood has been drawn on six occasions surrounding the times Petitioner has made complaints of pain and rectal bleeding. Dr. Patterson Decl., ¶ 28. Aside from having an iron deficiency (not anemia), for which he is being given iron supplements, his labs have been remarkably normal. *Id.* In particular, his hemoglobin levels which were noted as low during his visit to Kaiser Permanente in April of 2024, as referenced in the Petition and TRO, have continuously been reported as within normal limits. *Id.*

Based upon Dr. Patterson's background, knowledge, and experience, including her experience treating patients with colorectal cancer, as well as the lack of any significant results from Petitioner's emergency room visit earlier this month, she opines that Petitioner has not exhibited any symptoms consistent with colon cancer, or any form of cancer or other serious medical condition. Dr. Patterson Decl., ¶ 30. The

recommended course of action based on Petitioner's complaints is for him to undergo a colonoscopy, which has already been scheduled. Dr. Patterson Decl., ¶ 31. At bottom line, Dr. Patterson believes that the medical providers at OMDC can provide, and have provided, adequate and appropriate medical care to Petitioner throughout his time at the facility. Dr. Patterson Decl., ¶¶ 34-35.

III. Argument

A. Petitioner's Requested Relief is not Available Under 28 U.S.C. § 2241

At the outset, the Court should deny Petitioner's TRO because he is not entitled to habeas relief based on the claims asserted in the Petition. Petitioner's claims regarding the adequacy of his medical care while at OMDC relate to the conditions of his confinement. But habeas relief is not available to challenge the conditions of someone's confinement. Instead, habeas relief is available only to challenge the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979). In *Pinson*, for example, two federal prisoners filed habeas corpus petitions asserting that their incarceration during the COVID-19 pandemic violated the Eighth Amendment and that the only appropriate relief was their immediate release from custody. But the Ninth Circuit affirmed dismissal of the petitions, filed under § 2241, for lack of jurisdiction, concluding that "the Ninth Circuit has long held that the 'writ of habeas corpus is limited to attacks upon the legality or duration of confinement' and does not cover claims based on allegations 'that the terms and conditions of … incarceration constitute cruel and unusual punishment'." *Id.* at 1065 (quoting *Crawford*, 599 F.2d at 891)). The Court should deny the TRO at the outset because the Petition fails to seek relief within this Court's jurisdiction.

B. Petitioner Does Not Meet the Standard for a TRO

Alternatively, Petitioner's TRO motion should be denied because he has not established he is likely to succeed on the underlying merits of his habeas claims and because the equities do not weigh in his favor. 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 may decide a preliminary injunction. Instead, he seeks to have the Court essentially decide the dispute at its inception via an *ex parte* TRO that mandates his immediate release. 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 (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").

A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). In general, the showing required for a TRO is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary restraining order, a plaintiff/petitioner 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,* 555 U.S. at 20; s*ee also Nken*, 556 U.S. at 426. 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. 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)).

1. No Likelihood of Success on the Merits

It is extraordinary that Petitioner seeks to have this Court, less than a week after he filed his petition and without the opportunity for full briefing or exploration of the severity of his medical condition, order his release. But as set forth above and in the Declaration of Dr. Rae Patterson, Petitioner has failed as a threshold matter to demonstrate a likelihood of success on the merits. Therefore, the Court should deny the TRO. *See Garcia*, 786 F.3d at 740.

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*, 135 S. Ct. 2466, 2473 (2015). The institution is not charged with guaranteeing no injury and no risk to detainees; instead, the government is charged with taking reasonable steps to protect those in custody. *See Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018); *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2015); *Dawson v. Asher*, No. C20-0409 JLR-MAT, 2020 WL 1704324, at *12 (W.D. Wash. Apr. 8, 2020) (quoting *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989)).

Further, because he asserts his inadequate medical care claim under the Fifth Amendment due process clause, he must establish the following:

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

Fraihat v. U.S. Immigr. & Customs Enf't, 16 F.4th 613, 636 (9th Cir. 2021) (quoting *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). The third factor requires a showing that officials' conduct was "objectively unreasonable," a standard which requires "more than negligence but less than subjective intent – something akin to reckless disregard." *Id.* (quoting *Castro v. County of Los Angles*, 833 F.3d 1060, 1071 (9th Cir. 2016)).

Petitioner has fallen far short of demonstrating at this early stage of the case that there is a likelihood of success on the merits. In support of his claim that OMDC is denying him adequate medical care, Petitioner first provides an undated and unsworn letter from a family medicine resident, Dr. Ho. But it is unclear from the letter whether Dr. Ho (who does not appear to be licensed yet by the Medical Board of California) has ever physically examined Petitioner. Dr. Ho appears to rely exclusively on information contained in Petitioner's own, unsworn, self-reports as well as records from his April 2024 treatment at Kaiser Hospital to opine that Petitioner needs urgent medical treatment. But Dr. Ho does not evaluate or discuss the impact of the more recent records from Petitioner's treatment at Sharp Hospital on July 6, 2025, which showed no significant findings on CT scan or labs. Dr. Ho also opines that Petitioner is not a danger to the community, but it is unclear whether she has any knowledge regarding the circumstances of Petitioner's arrest in May of 2024 which included his failure to yield and his possession of an air pistol which had all the markings removed to look like a regular firearm. *See* Case No. 24cr1298-RBM, Doc. No. 43.

Petitioner also supports his TRO motion with his attorney's declaration which contains unsworn hearsay statements from Petitioner. But that declaration contains descriptions of symptoms suffered by Petitioner (such as dizziness, headaches, blurry vision, vomiting, having parts of his "inside" that have come outside his body through his anus, difficulty urinating) which are not reflected in the records of medical treatment from OMDC. Dr. Patterson Decl., ¶ 32. Likewise, there is no indication Petitioner has "begged" to be sent to an emergency room – to the contrary, medical staff at OMDC offered to send him to the emergency room on June 16, 2025, but Petitioner refused. When he was taken to the emergency room on July 5, 2025, he was discharged with no significant findings. *Id.* Petitioner's counsel's declaration regarding the information Petitioner relayed to her about his visit to Sharp Medical Center in July of 2025 is also inconsistent with what is reflected in the records from that visit.

In contrast, the declaration of Dr. Rae Patterson, an internal medicine physician with more than 25 years of clinical experience, establishes that Petitioner has received, and will continue to receive, appropriate medical care at OMDC. Petitioner has been seen multiple times by medical providers at OMDC, and provided with lab tests, medications, and outside care. He has maintained his weight throughout his time at OMDC, and his vital signs and lab results are all within normal limits as set forth in Dr. Patterson's declaration.

Finally, Respondents note that the account of Petitioner's medical chronology contained in his Petition and TRO motion is inconsistent with the information contained in the Sentencing Memorandum filed by his court-appointed attorney in his criminal case. *See* Case No. 24cr1298-RBM. For example, Respondent has contended that he was diagnosed with colon cancer at Kaiser in April of 2024, but in his Sentencing Memorandum he asserted that he was diagnosed in January of 2024 and that he lacked the financial resources needed to obtain further testing and treatment. It is also notable that Petitioner refused to allow OMDC to obtain his Kaiser records earlier, and when OMDC did receive those records, they did not reflect the cancer diagnosis Petitioner

has asserted. Petitioner has failed to carry his heavy burden of demonstrating likelihood of success on the merits of his claim so as to support the extraordinary remedy he seeks.

Petitioner also fails to establish a likelihood of success on his claim asserted under the Administrative Procedure Act (APA). Petitioner argues an alleged denial of adequate medical and reasonable safety is arbitrary, violates the Fifth Amendment, and contrary to statutory authorization under 5 U.S.C. § 706(2). As an initial matter, this claim fails for all the reasons set forth above.

Moreover, the APA also places limits on when agency action is subject to judicial review. "Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704; *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017) ("[]§ 704's requirement that to proceed under the APA, agency action must be final or otherwise reviewable by statute is an independent element without which courts may not determine APA claims"). Reviewable "agency action" is defined to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). "While this definition is 'expansive,' federal courts 'have long recognized that the term [agency action] is not so all-encompassing as to authorize . . . judicial review over everything done by an administrative agency.'" *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800-01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Management*, 460 F.3d 13, 19 (D.C. Cir. 2006)). Further, to qualify as "final," the challenged agency action must "mark the consummation of the agency's decision making process" and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Petitioner's allegations of inadequate medical care are not final agency actions as contemplated by the APA and, thus, are not subject to review under the APA. Petitioner has not shown a likelihood of success on the merits.

2. Irreparable Harm Has Not Been Shown

Petitioner 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 entitled to such relief." *Winter*, 555 U.S. at 22. Here, the available medical information shows that Petitioner does not urgently require any care above and beyond what is already being provided by OMDC. Petitioner has not shown irreparable harm.

3. Balance of Equities Does Not Tip in Plaintiff's Favor

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases). Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, Petitioner has failed to demonstrate likelihood of success on the merits of his claim of inadequate medical care. Furthermore, Petitioner has many other avenues available to him to challenge the conditions of his confinement that does not involve this Court ordering his immediate release from custody.

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IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the TRO Motion.

DATED: July 31, 2025

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