UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:25-cv-23792 BLOOM / ELFENBEIN

PIERRE REGINALD BOULOS,

Petitioner,

vs.

DIRECTOR, U.S. Department of Homeland Security Immigration and Customs Enforcement Enforcement and Removal Operations Miami Field Office; ACTING DIRECTOR, U.S. DHS ICE; SECRETARY, DHS; U.S. ATTORNEY GENERAL; ACTING DIRECTOR, U.S. Department of Justice Executive Office for Immigration Review; and U.S. SECRETARY OF STATE,

Respondents.
_____/

RESPONDENTS' RESPONSE TO PETITIONER'S EXPEDITED MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Respondents, by and through their undersigned counsel, respond as follows to Petitioner PIERRE REGINALD BOULOS's Expedited Motion for Temporary Restraining Order and Motion for Preliminary Injunction ("TRO Motion") [ECF 31].

INTRODUCTION

In his TRO Motion, Petitioner challenges his conditions of confinement. He complains that while in immigration detention, he "waited nearly a month for wet macular degeneration treatment after a doctor at Krome made an urgent referral." *Id.*, p. 5. Although he was treated at Bascom Palmer Eye Institute, he was unsatisfied with the medical care he received, claiming that the Bascom Palmer physician "injected him with a different medication than Dr. Boulos is prescribed," *Id.* Petitioner claims that as a result, he will suffer "irreparable harm in the absence of preliminary

relief," *Id.*, p. 18, and that only "swift intervention from this Court can prevent further irreparable harm, including total blindness." *Id.*, p. 19. Petitioner therefore demands this Court order Respondents to "immediately release Petitioner from immigration custody," and furthermore, to enjoin and restrain Respondents "from re-detaining Petitioner during the pendency of his removal proceedings absent a pre-deprivation hearing before this Court in which Respondents must demonstrate by clear and convincing evidence that Petitioner's re-detention is justified because he presents a danger to the community or such a flight risk that no condition or combination of conditions could assure his future appearance before immigration authorities." ECF 31-14.

Essentially, Petitioner now seeks in his instant TRO Motion the identical relief sought in his habeas petition. ECF 1, p. 29, ¶ 9 (requesting as relief that the Court "Grant temporary and permanent injunctive relief requiring the Respondents / Defendants to release the Petitioner from custody.") As the bases for relief, Petitioner claims (1) his continued immigration detention is unlawful because he is a U.S. citizen; (2) his detention without bond is ultra vires; and (3) he is neither a danger nor a flight risk. ECF 1, p. 2.

The Court should deny the TRO Motion. First, Petitioner does not make a showing of a substantial likelihood of success on the merits; or that the TRO is necessary to prevent irreparable injury; or that the threatened injury outweighs the harm that the order would cause to the Respondents; or that the TRO would is in the public interest. Petitioner is not a U.S. citizen; the immigration judge ("IJ") has already determined Petitioner's alienage by clear and convincing evidence, based on the evidence that he took an oath of renunciation of U.S. nationality voluntarily and with the intention of relinquishing U.S. citizenship. Moreover, a person in removal proceedings may have such nationality claim decided *only* as provided under 8 U.S.C. § 1252(b). 8 U.S.C. § 1252(b)(5)(C). 8 U.S.C. § 1503(a) deprives a district court of jurisdiction to consider a claim of citizenship if the person's status arose by reason of or in connection with removal proceedings, as occurred here. The instant TRO Motion is the wrong procedural avenue to challenge the IJ's finding of alienage.

Second, the TRO Motion challenges the conditions of Petitioner's confinement in immigration detention. This challenge improperly exceeds the scope of the underlying habeas petition. Even assuming that Petitioner's conditions of confinement are unconstitutional, the appropriate form of relief is not his release, but a discontinuance of the improper practice or correction of the conditions.

Finally, Petitioner is wrong in his assertion that the government must bear the burden of proof by clear and convincing evidence that the Petitioner is a flight risk to justify his continued immigration detention. ECF 31-14. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings without requiring the government to bear the burden to justify detention, much less by clear and convincing evidence.

ARGUMENT

I. Legal Standard

The elements for both a temporary restraining order ("TRO") and preliminary injunction are the same. A plaintiff must show: (1) a substantial likelihood of success on the merits; (2) that the TRO or preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm that the order would cause to the non-movant; and (4) that the TRO or preliminary injunction would not be adverse to the public interest. *Parker v. State Bd. Of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001). A preliminary injunction is considered an extraordinary and drastic remedy and, as such, is not granted unless the movant can clearly satisfy the burden of persuasion as to each of the four prerequisites. *De Young v. Owens*, 646 F.3d 1319, 1324 (11th Cir. 2011).

"The first two factors of the traditional standard are the most critical." *Nken v. Holder*, 556 U.S. 418, 434 (2009). However, "the movant may also have his motion granted upon a lesser showing of a 'substantial case on the merits' when 'the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay.'" *Garcia-Mir v. Meese*, 781 F. 2d 1450, 1453 (11th Cir. 1986). Finally, the movant's failure to establish any one of the essential elements will warrant denial of the request for preliminary injunctive relief and obviate the need to discuss the

remaining elements. *See Pittman v. Cole*, 267 F.3d 1269, 1292 (11th Cir. 2001) (citing *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994)).

II. Petitioner Has Not Demonstrated a Substantial Likelihood of Success on the Merits

a. The Immigration Judge Has Already Determined Petitioner's Alienage, and the District Court Lacks Jurisdiction to Review That Determination.

In his habeas petition, Petitioner alleged that he had a "colorable claim to being a United States citizen." ECF 1, ¶ 1, 13, 135. Petitioner claims that he is a U.S. citizen, on the basis of claimed errors by the State Department in processing his 2019 renunciation. TRO Motion, p. 14-16. However, Petitioner's alienage has already been determined by the IJ, and this Court does not currently have jurisdiction to review this determination. Therefore, Petitioner does not have a likelihood of success on the merits, and the TRO Motion must be denied.

First, despite Petitioner's contentions otherwise, the IJ found by clear and convincing evidence that that Petitioner is not a current U.S. citizen. *See* transcript of October 20, 2025, immigration proceedings, ECF 31-6, p. 25 ("(COURT: "Do I have the jurisdiction to establish alienage? Yes."); p. 29 (COURT: "I think that there's been enough at this point to prove alienage[.]"); p. 33 (COURT: "I'll make that determination [on Petitioner's alienage]. I think that they [the government] has established by clear and convincing evidence alienage."); *see also* Notice to Appear (alleging that Petitioner is "not a citizen or national of the United States.") (Exhibit 1) *and* November 2, 2025 Order of Immigration Judge (denying Petitioner's motion to terminate immigration proceedings and finding that government met its burden by clear and convincing evidence that Respondent is removable as charged). (Exhibit 2)

Second, "An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Plaintiff was placed in removal proceedings and served with a Notice to Appear on July 18, 2025. "Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service." 8 C.F.R. §

1003.14(a). "For proceedings initiated after April 1, 1997, these [charging] documents include a Notice to Appear." 8 C.F.R. § 1003.13. A person "charged with deportability shall be found to be removable if [DHS] proves by clear and convincing evidence that the respondent is deportable as charged." 8 C.F.R. § 1240.8(a).

A person may assert citizenship as a defense in removal proceedings. If the immigration judge accepts the citizenship defense, he terminates the removal proceedings without deciding citizenship. *Rios-Valenzuela v. DHS*, 506 F.3d 393, 396-97 (5th Cir. 2007) (citations omitted). If the immigration judge rejects the defense of citizenship and orders removal, the individual may appeal the immigration judge's decision to the Board of Immigration Appeals ("BIA").1 *See* 8 C.F.R. § 1003.1(b); *see also* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if the alien has exhausted all administrative remedies available to the alien as of right..."). If the appeal is unsuccessful and the BIA rejects the citizenship claim, the individual can petition the Court of Appeals for review of the final order of removal, including for review of the citizenship claim. 8 U.S.C. § 1252(b); *Rios-Valenzuela, 506 F.3d 393 at 396*. Under 8 U.S.C. § 1252(b)(5), the court of appeals may decide the nationality claim if the court finds from the pleadings and affidavits that no genuine issue of material fact about the individual's nationality is presented. 8 U.S.C. § 1252(b)(5)(A). However, if the court finds that a genuine issue of material fact about the individual's nationality is presented then the court "shall transfer the case to a district court for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court." 8 U.S.C. § 1252(b)(5)(B). An individual in removal proceedings may have such nationality claim decided *only* as provided under 8 U.S.C. § 1252(b). 8 U.S.C. § 1252(b)(5)(C). Therefore, this Court lacks jurisdiction to consider Petitioner's citizenship claim.

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1 In this case, the Immigration Judge's November 2, 2025, Order indicates that Petitioner reserved his right to appeal the Immigration Judge's findings of alienage and removability, which is due to BIA on December 3, 2025. Exhibit 2.

Further, 8 U.S.C. § 1503(a) does not apply to this case because the issue of Petitioner's citizenship arose by reason of, or in connection with removal proceedings and is in issue in such proceedings, thus § 1503(a)(1) and (2) bar jurisdiction over Petitioner's potential claim under 8 U.S.C. § 1503(a). Under 8 U.S.C. § 1503(a):

> If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of Title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, **except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any removal proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such removal proceeding.**

Id. (emphasis added). This provision clearly deprives a district court of jurisdiction to consider a claim of citizenship if the person's status arose by reason of or in connection with removal proceedings.

Petitioner's citizenship, no matter how many times he claimed it later, "arose by reason of, or in connection with" his removal proceedings. 8 U.S.C. § 1503(a)(1). *See Olopade v. AG of the United States*, 565 Fed. App'x. 71, 73 (3d Cir. 2014). (affirming the district court's dismissal of the complaint for lack of jurisdiction because "[a]lthough Olopade's removal proceedings have terminated, the genesis of Olopade's citizenship claim was a defense he raised to a removal order").

b. Petitioner's Motion for Temporary Restraining Order Challenges the Conditions of His Confinement in Immigration Detention, and Therefore Exceeds the Scope of His Underlying Habeas Petition

It is well-settled that for Petitioner to be entitled to relief under Rule 65, he must tether his request for relief to a cause of action set forth in his pleading. *Alabama v. United States Army Corps of Eng'rs*, 424 F.3d 1117, 1134 (11th Cir. 2005) ("[I]njunctive relief must relate in some fashion to the relief requested in the complaint."); *In re Managed Care Litig.*, 2009 U.S. Dist. LEXIS 141495, 2009 WL

7848517, *7 (S.D. Fla. Mar. 27, 2009) ("'[I]njunctive relief' cannot be plead as a separate claim because it is not a cause of action but a form of relief."). Petitioner cannot rely upon Rule 65 in a vacuum to secure his release.

Here, Petitioner's challenge to his confinement through his instant Motion for Temporary Restraining Order is ultimately an objection to his conditions of confinement. Though circuit courts are divided on whether habeas is the appropriate mechanism for challenging conditions of confinement, the weight of authority in the Eleventh Circuit is that it is not. *See Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) ("If these claims are considered in a habeas corpus context, however, this Court has held that even if a prisoner proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release."); *Vaz v. Skinner*, 634 Fed. App'x 778, 780 (11th Cir. 2015) ("Claims challenging the fact or duration of a sentence fall within the 'core' of habeas corpus, while claims challenging the conditions of confinement fall outside of habeas corpus law."); *Cook v. Baker*, 139 Fed. App'x 167, 168 (11th Cir. 2005) (holding similarly to *Vaz*); *Daker v. Warden*, No. 18-cv-14984, 805 Fed. App'x. 648, 2020 U.S. App. LEXIS 4764, at *2 (11th Cir. 2020) (holding similarly to *Vaz*); *Corona Matos v. Lopez Vega*, 614 F. Supp. 3d 1158, 1168 (S.D. Fla. 2020) (*Ruiz, J.*) (finding that habeas "is not the appropriate mechanism" for the ICE detainee petitioners' request for release from confinement due to COVID-19).

Instead, the proper vehicle for bringing such claims is a civil rights action, such as under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) or 42 U.S.C. § 1983. *See Hampton v. Fed. Corr. Inst.*, No. 1:09-cv-00854, 2009 U.S. Dist. LEXIS 52368, at *5 (N.D. Ga. 2009) ("[T]he proper vehicle for a prisoner to challenge his conditions of confinement is a civil rights, rather than a habeas corpus, action.") (*citing McKinnis v. Mosely*, 693 F.2d 1054, 1056-57) (11th Cir. 1982)).

Even assuming that Petitioner's conditions of confinement are unconstitutional—which Respondents contend they are not—in this Circuit, the appropriate form of relief from unconstitutional conditions of confinement is not

release by writ of habeas corpus, but a discontinuance of the improper practice or correction of the conditions. *Vaz*, 634 F. App'x at 781.[2]

c. The Motion for Temporary Restraining Order Seeks Petitioner's Release from Immigration Detention – the Very Relief Sought in His Habeas Petition

"The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11th Cir. 2001) (quoting *Northeastern Fla. Chapter of Associated Gen. Contractors of America v. City of Jacksonville*, 896 F.2d 1283, 1284 (11th Cir. 1990)). "Mandatory preliminary relief, which goes well beyond simply maintaining the status quo[,] is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party." *Powers v. Sec'y, Fla. Dep't of Corr.*, 691 F.App'x 581, 583 (11th Cir. 2017) (quoting *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976)); *see also Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1297 (11th Cir. 2005) (citing *Canal Auth. of State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974)) ("A temporary restraining order protects against irreparable harm and preserves the status quo until a meaningful decision on the merits can be made."); *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982) ("One inherent characteristic of a temporary restraining order is that it has the effect of merely preserving the status quo rather than granting most or all of the substantive relief requested in the complaint.").

Here, Petitioner does not seek to maintain the status quo, but rather to obtain the relief he ultimately pursues in this habeas action. Petitioner's request for immediate release falls squarely within his habeas petition. Injunctive relief to obtain resolution of the ultimate issues presented in the complaint is not appropriate. *See Northeastern Fl. Chapt. of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*,

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[2] Petitioner has not alleged, and cannot establish, that Respondents have acted with "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976). Should the Court find that it has jurisdiction to review in habeas, Respondents request opportunity to supplement the record with Petitioner's medical records.

Fla., 896 F.2d 1283, 1285 (11th Cir. 1990) (quoting *Sampson v. Murray*, 415 U.S. 61, 88, (1974) ("The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.")); *Nyang v. Barr*, No. 4:19-cv-01459, 2019 U.S. Dist. LEXIS 246105, at *3 (N.D. Ala. Nov. 25, 2019) (denying alien's motion for injunctive relief filed in petition for habeas relief seeking his immediate release from immigration detention on the grounds that alien "has not shown he will suffer irreparable harm absent the grant of preliminary injunctive relief because the same ultimate issue will be decided by the court upon completion of the previously ordered briefing schedule.")

d. The Government Does Not Bear the Burden of Proof – Let Alone by Clear and Convincing Evidence – to Justify Petitioner's Immigration Detention

Petitioner asserts that the government must bear the burden of proof by clear and convincing evidence that the Petitioner is a flight risk to justify his continued immigration detention. ECF 31-14. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings without requiring the government to bear the burden to justify detention, much less by clear and convincing evidence. *See. e.g.*, *Demore v. Kim,* 538 U.S. 510, 531 (2003), *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Indeed, the Supreme Court has upheld detention pending removal proceedings on the basis of a categorical, rather than individualized assessment that a valid immigration purpose warrants interim custody pending removal proceedings. *Demore*, 538 U.S. at 423-527.

Moreover, even in cases where the Court has determined that an individualized bond hearing is warranted, it has directed that such hearing be conducted in accordance with longstanding regulations that place the burden on the alien. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8); *see also Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (stating "[n]othing in § 1226(a)'s text … even remotely supports the imposition of" "periodic bond hearings every six months in which the

Attorney General must prove by clear and convincing evidence that the alien's continued detention is necessary."). These procedures permit DHS/ICE to make an "initial custody determination," considering an alien's flight risk and dangerousness, and permits redetermination by the Immigration Judge and appeal to the Board of Immigration Appeals. 8 C.F.R. §§ 1003.19(f); 1236.1(c)(8) and (d).

e. The Balance of Equities and Public Interest Tips in the Respondents' Favor

Petitioner argues that "Respondents cannot claim *any* public interest in continuing agency action that violates the law." TRO Motion, p. 20 (emphasis original). This argument begs the question, presupposing that Petitioner's detention is ultra vires and that Petitioner "is a U.S. citizen." *Id.* Petitioner also implicitly challenges Secretary Rubio's determination that Petitioner is a deportable alien under INA § 237(a)(4)(C) (8 U.S.C. § 1227(a)(4)(C)).

Where the government is the opposing party, balancing of the harm and the public interest merge. *See Nken v. Holder*, 556 U.S. 418, 435, (2009). Thus, the Court asks whether any significant "public consequences" would result from issuing the preliminary injunction. *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008).

First, the government has a strong interest in enforcement of its immigration laws as it interprets them. *See Dep't of State v. Munoz*, 602 U.S. 899, 911-12 (2024) ("[T]he through line of history is recognition of the Government's sovereign authority to set the terms governing the admission and exclusion of noncitizens."). It is a fallacy to think that Respondents do not have a legitimate government purpose in preventing detained aliens from absconding and ensuring that they appear for removal. *Jennings*, 138 S. Ct. at 836; *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at 690-91. Thus, Petitioner's continued detention is not "imposed for the purpose of punishment," but is instead "incident to some legitimate government purpose." *Magluta v. Samples*, 375 F.3d 1269, 1273 (11th Cir. 2004).

The government's interests are also at their apex where—as here—foreign policy and national security intersect. *Palestine Info. Office v. Shultz*, 272 U.S. App. D.C. 1, 853 F.2d 932, 942 (1988) (noting that the judicial branch's "deference to the

State Department on questions of foreign policy is great."), citing *Haig v. Agee*, 453 U.S. 280, 292 (1981) ("Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention."); *see also Clancy v. OFAC*, No. 05-C-580, 2007 WL 1051767, at *6 (E.D. Wis. Mar. 31, 2007) (noting that "national security" is "the most compelling governmental interest"); *OKKO Bus. PE v. Lew*, 133 F. Supp. 3d 17, 28 (D.D.C. 2015) (whether Government action was an "effective strategy" in fulfilling certain "foreign policy objectives . . . is not a question for this Court"). Thus, the remaining question is whether continued detention in light of Petitioner's claimed medical issues is reasonably related to these legitimate state interests. Clearly, it is.

Notably, in their motion papers, Petitioner offers no basis to doubt the importance of the national security and foreign policy concerns raised by Secretary Rubio's determination that Petitioner is a deportable alien under INA § 237(a)(4)(C) (8 U.S.C. § 1227(a)(4)(C)). Nor could they. *Zarmach Oil Servs., Inc. v. U.S. Dep't of the Treasury*, 750 F. Supp. 2d 150, 157-58 (D.D.C. 2010) (declining "to adjudicate such matters of strategy and tactics relating to the conduct of foreign policy, which 'are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.'" (quoting *Regan v. Wald*, 468 U.S. 222, 242 (1984)). Therefore, the balance of equities and public interest tips in Respondents' favor, necessitating denial of the TRO Motion.

CONCLUSION

WHEREFORE, the Court should deny Petitioner's TRO Motion.

Respectfully submitted,

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