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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Vardan Gukasian,

Petitioner,

v.

Kristi Noem, et al.,

Respondents.

Case No. 2:25-cv-01697-JAD-DJA

Federal Respondent's Response to Petitioner's Motion for Temporary Restraining Order, ECF No. 5

I. Introduction

Petitioner, Vardan Gukasian ("Mr. Gukasian" or "Petitioner") seeks a temporary restraining order requiring his immediate release from immigration detention—an extraordinary remedy that he has not come close to establishing he deserves. This Court should deny the motion because Petitioner cannot satisfy any of the four elements required for such relief.

First, Petitioner is unlikely to succeed on the merits of his claims. His petition fundamentally challenges the conditions of his confinement—inadequate medical care and restricted attorney access—rather than the legality of his detention itself. Under *Pinson v. Williams*, 69 F.4th 1059 (9th Cir. 2023), such conditions-of-confinement claims do not sound in habeas corpus and are therefore not cognizable under 28 U.S.C. § 2241. Even if this Court were to find jurisdiction, Petitioner has received all the process the Constitution

requires. He obtained a bond redetermination hearing before an immigration judge and appealed the adverse decision to the Board of Immigration Appeals. Under *Diaz v. Garland,* 53 F.4th 1189, 1195 (9th Cir. 2022), this procedural framework satisfies due process regardless of outcome. The Constitution guarantees adequate procedures, not favorable results.

Second, Petitioner has not demonstrated irreparable harm. His allegations of difficulty accessing counsel constitute ordinary incidents of immigration detention that affect all similarly situated individuals and cannot support extraordinary relief. More fundamentally, Petitioner possesses an adequate administrative remedy: he may seek a subsequent bond redetermination under 8 C.F.R. § 1003.19(e) based on materially changed circumstances, including his allegedly deteriorating health. The availability of this remedy negates any claim of irreparable injury.

Third and fourth, the balance of equities and public interest weigh decisively against Petitioner. Granting the requested relief would undermine the orderly administration of immigration laws and improperly substitute this Court's judgment for the considered determinations of an immigration judge and the BIA. Because Petitioner faces a "heavy" burden to obtain a mandatory injunction that would alter the status quo by requiring his release, and because he has failed to carry that burden, this Court should deny the motion.

II. Statement of Facts and Procedural History

Mr. Gukasian is a native of the former Union of Soviet Socialist Republics and a citizen of Armenia and Russia. On February 19, 2022, Mr. Gukasian was admitted to the United States in New York, New York, as a nonimmigrant Visitor for Pleasure. *See* Exhibit A, Notice to Appear. He was authorized to remain in the United States for a temporary period, not to exceed August 18, 2022. *Id.*; *see also* ECF No. 5 at ¶ 19. On February 20, 2025, Mr. Gukasian was detained by the Immigration and Customs Enforcement. ECF No. 5 at ¶ 20. A Notice to Appear was issued on February 20, 2025 and provided that Mr. Gukasian was subject to removal under section 237(a)(1)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1227(a)(1)(B). *See* Exhibit A and Exhibit B, Additional

Charges of Inadmissibility/Deportability. As indicated by Exhibit B, Mr. Gukasian was placed in non-expedited removal proceedings pursuant to section 240 of the INA, 8 U.S.C. § 1229a.

Mr. Gukasian was provided with an initial bond determination which was denied. Mr. Gukasian filed a first request for a Bond Redetermination. Following the hearing, Petitioner's counsel sought to have late-filed evidence considered as part of the IJ's bond determination. The IJ advised that if Petitioner's counsel would like it to be considered, the bond redetermination should be withdrawn and a new one submitted. *See* Exhibit C, Order of Immigration Judge, dated May 9, 2025, at 2. Subsequently, Petitioner's counsel withdrew his request one additional time. *Id.* The bond redetermination hearing went forward on March 17, 2025. *See* Exhibit D, Bond Redetermination Order, dated March 19, 2025, at 1. The Immigration Judge denied Mr. Gukasian's request on the grounds that he was a danger to the community. *Id* at 5. Mr. Gukasian appealed the IJ's March 19, 2025 order to the Bureau of Immigration Appeals. The BIA upheld the IJ's decision and, on September 19, 2025, it dismissed Mr. Gukasian's appeal concerning his bond determination. *See* Exhibit E, BIA Decision, dated September 19, 2025.

In the interim, Mr. Gukasian sought relief from his removal proceedings. Two days before the individual hearing scheduled on April 25, 2025, Petitioner's counsel sought a 75-day continuance due to personal hardship of one of Petitioner's attorneys. *See* Exhibit E, at 3. The Court denied the motion finding the requested 75-day continuance "arbitrary, unreasonable and inappropriately long for a detained matter." *Id.* Following oral argument at the hearing on April 25, 2025, the Court reset the individual hearing on removal out 33 days and extending the evidentiary filing deadline. *Id.* at 4. Following the commencement of the merits hearing on removal, the length of direct examination, cross examination and expert witness testimony caused the hearing to be held over many days, but could not be held consecutively. The matter was finally submitted on or about September 12, 2025 to the IJ. The IJ has yet to issue her ruling on Petitioner's removability. ECF No. 5, at 5-6.

On September 9, 2025, Petitioner initiated this matter by filing a Petition for Writ Of Habeas Corpus and Complaint For Injunctive And Declaratory Relief. ECF No. 1. Petitioner filed a Motion for Temporary Restraining Order on September 19, 2025. ECF No. 5. Therein, Petitioner seeks an order from the Court to "immediately be released on bail pending these proceedings." *Id.* at 30. On September 23, 2025, the Court issued an order dismissing Petitioner's first, second, and fourth claims for relief in his petition "because they are not cognizable in federal habeas. This dismissal is without prejudice to Gukasian's ability to bring those claims in a separate lawsuit under 42 U.S.C. § 1983." ECF No. 7 at 6. The Court directed Federal Respondent's to file and serve a response to the petition (ECF No. 1, as narrowed in this order) by October 13, 2025. *Id.* The Court further directed that the "respondents must file a response to Gukasian's motion for a temporary-restraining order (ECF No. 5) by noon on Monday, September 29, 2025." *Id.* This response follows.[1]

III. Jurisdiction and Legal Standards

A. Jurisdiction and Burden of Proof in Federal Habeas Petitions

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).

Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n. 16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

[1] Because of the receipt of four additional petitions for writ of habeas corpus received by the undersigned (three contemporaneously with this matter and one received today), Federal Respondents' counsel was not cognizant of the noon deadline and apologizes for the oversight.

B. Jurisdiction for Habeas Petitions Alleging Conditions of Confinement Claims

Generally, challenges to the legality or duration of confinement are pursued in a habeas proceeding, *see Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979), while challenges to conditions of confinement are pursued in a civil rights action, *see Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). In *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023), the Ninth Circuit determined that convicted prisoners' conditions of confinement claims raised in a § 2241 habeas petition did not sound in habeas and were therefore properly dismissed for lack of jurisdiction. *Id.* at 1076. *Pinson* dealt with a habeas challenge to conditions of confinement brought by prisoners who had been convicted, and thus did not directly address this issue in the context of civil immigration detention. *Id.* Subsequent to *Pinson*, the Ninth Circuit ruled in *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024), involving a petitioner detained under § 1226(c), and cited *Pinson* in distinguishing core and non-core habeas claims. "*Pinson* solidified the rule that a habeas claim is one challenging the fact of confinement, rather than the conditions of confinement." 109 F.4th at 1194.[2]

C. Jurisdiction Pursuant to 8 U.S.C. § 1226(e)

1. Detention and Removal Under 1226(a)

Noncitizens are removable if they fall within any of several statutory classes of removable individuals. *Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023) (citing 8 U.S.C. § 1227(a)). Four statutes grant the Government authority to detain noncitizens who have been placed in removal proceedings: 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a). *Id.* A noncitizen's place within this statutory framework determines whether his detention is mandatory or discretionary, as well as the review process available to him if he wishes to contest the necessity of his detention. *Rubin v. United States Immigr. & Customs Enf't Field Off.*

[2] At least one district court has concluded that "neither the United States Supreme Court, nor the Ninth Circuit, has resolved the question of whether a conditions of confinement claim may be brought in the form of a petition for a writ of habeas corpus." *Herrera v. Mayorkas*, No. C24-1933-JNW-MLP, 2025 U.S. Dist. LEXIS 160010, at *21-22 (W.D. Wash. May 19, 2025).

Dir., 2024 WL 3431914, at *4 (W.D. Wash. June 28, 2024), report and recommendation adopted, 2024 WL 3431163 (W.D. Wash. 2024)(internal citations and quotations omitted).

Federal immigration law, under Section 1226(a), empowers the Secretary of Homeland Security to arrest and detain a deportable noncitizen pending a removal decision, and it generally gives the Secretary the discretion either to detain the noncitizen or to release him on bond or parole. 8 U.S.C. § 1226(a); *Nielsen v. Preap*, 586 U.S. 392, 397, (2019). Under Section 1226(a), a noncitizen is entitled to a bond hearing at which an Immigration Judge considers whether the noncitizen is a flight risk or a danger to the community. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)."). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. If Petitioners receive an adverse ruling, they "may appeal the immigration judge's decision to the Board of Immigration Appeals (BIA)." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527-28, 141 S. Ct. 2271, 210 L. Ed. 2d 656 (2021). In addition, following a showing of "change of circumstances," Petitioner can seek an additional bond redetermination hearing. *Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022)("Rodriguez Diaz has had the right to seek an additional bond hearing if his circumstances materially change. See 8 C.F.R. § 1003.19(e).")

2. Jurisdiction Under § 1226(e)

Section 1226 prohibits federal courts from reviewing "discretionary judgement[s]" as to detention determinations of noncitizens. The statute specifically provides that "[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). The Ninth Circuit has interpreted section 1226(e) to mean "that an alien may not use the federal courts to 'challeng[e] a 'discretionary judgment' . . . made regarding his detention or release.'" *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir.

2022) (quoting *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (plurality opinion)). However, section 1226(e) "does not limit habeas jurisdiction over 'constitutional claims or questions of law.'" *Martinez*, 36 F.4th at 1227 (quoting *Patel v. Garland*, 142 S. Ct. 1614, 1626 (2022) (holding that federal courts have habeas jurisdiction over "questions of law or constitutional questions" but not "an immigration court's determination that a noncitizen is a danger to the community"); *see also Singh v. Holder,* 638 F.3d 1196, 1207 n.6. (9th Cir. 2011).

IV. Argument

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

"A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter*, 555 U.S. at 20). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is aptly described as a "heavy" one. *Id.*

The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to

obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phx. Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Accordingly, where a petitioner seeks mandatory injunctive relief—seeking to alter the status quo— "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994). A mandatory injunction "goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 1320 (internal quotations and alteration omitted). A mandatory injunction "should not be issued unless the facts and law clearly favor the moving party." *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979). Mandatory injunctions "are not granted unless extreme or very serious damage will result and are not issued in doubtful cases[.]" *Id.* at 1115. A party seeking a mandatory injunction "must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed." *Garcia*, 786 F.3d at 740 (emphasis in original).

A. Petitioner is Unlikely to Succeed on the Merits of His Claim

Mr. Gukasian is unlikely to succeed on the merits because his claims challenge the conditions rather than the fact of his confinement, placing them outside habeas jurisdiction under *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023). Furthermore, he has received constitutionally adequate process through a bond hearing before an immigration judge and appellate review by the BIA, which *Diaz v. Garland*, 53 F.4th 1189, 1195 (9th Cir. 2022), establishes satisfies due process requirements regardless of outcome. The Constitution guarantees procedural safeguards, not substantive results, and Mr. Gukasian has been afforded the procedures to which he is entitled.

1. No Habeas Jurisdiction Lies for a Condition of Confinement Claim

In *Pinson v. Carvajal*, the Ninth Circuit held that "claims that if successful would not necessarily lead to the invalidity of the custody are not at the core of habeas corpus," and thus do not sound in habeas at all. 69 F.4th 1059, 1071 (9th Cir. 2023). In other words, claims not at the "core of habeas corpus" are more appropriately initiated pursuant to 42 U.S.C. § 1983. *Id.* Through this holding, the court reinforced the fundamental distinction

between challenges to the fact of confinement and challenges to the conditions of confinement.

In *Pinson*, two inmates sought habeas relief, contending that the conditions of their incarceration during the COVID-19 pandemic violated the Eighth Amendment. The Ninth Circuit rejected the petitioners' contention that only habeas relief could ameliorate the harm inflicted by the government's ongoing failure to adequately treat their underlying medical conditions and protect them from exposure to the coronavirus. *See Doe v. Garland,* 109 F.4th 1188, 1194 (9th Cir. 2024) (discussing *Pinson*). The court concluded that because the relief sought—enhanced medical care and pandemic-related protections—would not necessarily result in the petitioners' release, the claims fell outside the scope of habeas jurisdiction. *Pinson*, 69 F.4th at 1071.

This principle applies with equal force here. Even if Petitioner could establish a conditions-of-confinement violation, "he does not establish that such a violation would justify immediate release, as opposed to injunctive relief that would leave him detained while ameliorating any unconstitutional conditions." *Herrera v. Mayorkas*, No. C24-1933-JNW-MLP, 2025 U.S. Dist. LEXIS 160010, at *25 (W.D. Wash. May 19, 2025) (citing *Ortiz v. Barr*, 2020 WL 13577427, at *7 n.8 (W.D. Wash. Apr. 10, 2020); *Doe v. Bostock*, 2024 U.S. Dist. LEXIS 102019, 2024 WL 3291033, at *8 (W.D. Wash. Mar. 29, 2024)). As another court recently observed, "[p]roviding relief on the conditions-of-confinement claims alleged here would not require [Petitioner's] release—only an order directing Respondents to improve the unconstitutional conditions." *Matom v. ICE/United States Immigr. & Customs Enf't*, No. 2:25-cv-648-JES-NPM, 2025 U.S. Dist. LEXIS 172961, at *7-8 (M.D. Fla. Sept. 5, 2025).

The parallel between *Pinson* and the instant matter is relevant. In *Pinson*, the petitioners sought release from incarceration predicated upon inadequate institutional responses to the COVID-19 pandemic—a conditions claim improperly framed as a habeas petition. Here, Mr. Gukasian similarly seeks relief predicated upon allegedly deficient medical care and restricted access to counsel. ECF No. 5, at 13-24. Both circumstances

involve challenges to the manner in which detention is administered rather than the legality of the detention itself.

While at least one district court has suggested that the question remains open in the immigration detention context, the Ninth Circuit's reasoning in *Pinson* controls. The case involved state prisoners, but its holding rests on fundamental principles of habeas jurisdiction that apply regardless of the detention context. The Supreme Court has consistently held that habeas corpus is reserved for challenges to the fact or duration of confinement, not its conditions. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (distinguishing between challenges to the fact of confinement, which sound in habeas, and challenges to conditions, which sound under § 1983).

Moreover, even assuming arguendo that this Court possesses jurisdiction to entertain Mr. Gukasian's habeas petition predicated upon his conditions-of-confinement allegations—including alleged inadequacies in medical care and restrictions upon access to counsel—the appropriate remedy would not constitute his release. Rather, the proper relief would be an injunction directing Respondents to rectify the allegedly substandard conditions while Mr. Gukasian remains in custody. Because habeas corpus is fundamentally concerned with the propriety of custody itself, and because any relief granted upon Petitioner's conditions claims would leave that custody undisturbed, such claims do not properly invoke this Court's habeas jurisdiction'

2. The Court Has No Jurisdiction Under 1226 (e) Absent a Due Process Violation and Petitioner Has Been Afforded the Due Process to Which He is Entitled

The Ninth Circuit has interpreted section 1226(e) to bar federal court challenges to "discretionary judgment[s]" regarding detention or release. *Martinez v. Clark*, 36 F.4th 1219, 1227 (9th Cir. 2022) (quoting *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018)). However, section 1226(e) does not limit habeas jurisdiction over constitutional claims or questions of law. *Id.* (citing *Patel v. Garland*, 142 S. Ct. 1614, 1626 (2022)).

In determinizing whether there has been a violation of a detainee's constitutional due process, the Ninth Circuit's decision in *Diaz v. Garland* provides dispositive guidance on

the due process requirements for immigration bond proceedings for detainees held pursuant to section 1226(a). 53 F.4th 1189 (9th Cir. 2022). In *Diaz*, the court addressed whether petitioners who had received bond hearings before an immigration judge, with the opportunity to appeal adverse decisions to the Board of Immigration Appeals, had been afforded constitutionally adequate process. *Id.* at 1194-95. The court concluded that they had, holding that "so long as the government follows reasonable, individualized determinations to ensure that the alien is properly in removal proceedings, due process does not require more bond hearings even after a prolonged period." *Id.* at 1218.

The *Diaz* court emphasized that due process does not guarantee any particular outcome, but rather ensures access to adequate procedures for contesting detention. *Id.* at 1213. The court noted that petitioners had a right to and received bond hearings before an immigration judge and possessed "the right to appeal to the BIA." *Id.* at 1209. This procedural framework, the court held, satisfied constitutional requirements because it provided a neutral decisionmaker, an opportunity to be heard, and appellate review of adverse determinations. *Id.* at 1210.

The instant matter is procedurally indistinguishable from Diaz. Mr. Gukasian received a bond redetermination hearing before an immigration judge, wherein he was afforded the opportunity to present evidence, call witnesses, and contest the grounds for his continued detention. *See* Exhibit D. Following an adverse determination, Mr. Gukasian exercised his right to appeal that decision to the Board of Immigration Appeals. *See* Exhibit E. This procedural posture mirrors precisely the circumstances in Diaz, where the Ninth Circuit held that such procedures satisfy constitutional due process requirements.

Under Diaz, the relevant inquiry is not whether Mr. Gukasian prevailed in his bond proceedings, but whether he received constitutionally adequate process to challenge his detention. 53 F.4th at 1194. The record establishes that he did. Mr. Gukasian appeared before an immigration judge who independently evaluated the evidence and applicable legal standards. He was represented by counsel, permitted to present testimony and documentary evidence, and afforded the opportunity to challenge the government's basis

for detention. Upon receiving an unfavorable decision, he pursued appellate review before the BIA, thereby exhausting the administrative procedures available to him.

The Constitution guarantees procedural safeguards, not substantive outcomes. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (establishing framework for evaluating procedural due process claims). Diaz makes clear that when an immigration detainee receives a bond hearing before an immigration judge with the opportunity for BIA review, "1226(a)'s procedures satisfy due process both facially and as applied." *Id.* at 1213. Mr. Gukasian has received exactly this process.

Moreover, Diaz forecloses any argument that continued detention following a bond hearing and appeal constitutes a constitutional violation. The Ninth Circuit explicitly rejected the notion that due process entitles immigration detainees to release on bond; rather, due process entitles them only to adequate procedures for contesting detention. *Id.* at 1209. Mr. Gukasian received those procedures. That the immigration judge and BIA ultimately determined that his continued detention was warranted does not transform an adequate process into an inadequate one. Because Mr. Gukasian has received precisely this process, his due process rights have been vindicated, and habeas relief on this ground is unwarranted.

3. Petitioner's Claims of Overlong Detention Are Not Supported by the Record

In *Diaz v. Garland*, the Ninth Circuit held that an 18-month period of detention during which Diaz had two bond hearings and sought BIA appeal did not violate due process, as the petitioners had received constitutionally adequate procedures to contest their detention. 53 F.4th 1189, 1213 (9th Cir. 2022). By comparison, Mr. Gukasian's six-month detention since his last bond hearing falls well short of the duration found constitutionally permissible in Diaz, particularly in light of his ability to seek a bond redetermination under 8 C.F.R. § 1003.19(e), further undermining any claim that his continued detention violates due process.

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B. Petitioner is Unlikely to Suffer Irreparable Harm

Petitioner has alleged irreparable harm in the form of continued denial of adequate medical care and allegedly insufficient access to his attorneys, which he contends impairs his ability to adequately prepare his defense to removal. Neither allegation supports the extraordinary relief requested.

With respect to the alleged insufficient access to counsel and purported inability to prepare his defense, such claims are inherent in virtually all immigration detention. *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018); (recognizing that certain hardships are inherent consequences of detention). If generalized difficulties in meeting with counsel or preparing a defense were sufficient to establish irreparable harm warranting immediate release, every detained immigrant would be entitled to a temporary restraining order. The Court cannot weigh this factor strongly in Petitioner's favor when the alleged harm is not unique to his circumstances but rather an ordinary incident of detention that affects all similarly situated individuals.

Moreover, Petitioner possesses an adequate administrative remedy that directly addresses his claims of changed circumstances. Under 8 C.F.R. § 1003.19(e), "[a]fter an initial bond redetermination, an alien's request for a subsequent bond redetermination . . . shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." Petitioner alleges that since his bond hearing in March 2025, he has experienced deteriorating health and difficulties accessing medical care. If true, these allegations constitute precisely the type of materially changed circumstances contemplated by section 1003.19(e) and provide a proper basis for seeking a subsequent bond redetermination before an immigration judge.

The availability of this administrative remedy substantially undermines Petitioner's claim of irreparable harm. Courts consistently hold that the existence of an adequate alternative remedy weighs against finding irreparable injury. *See Sampson v. Murray*, 415 U.S. 61, 90 (1974) (holding that possibility of monetary damages negates finding of irreparable injury) ("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."). Here, Petitioner need not await the "ordinary course of litigation"—he can immediately petition for a new bond hearing based on his allegedly deteriorated medical condition and seek release or modified conditions through the established administrative process.

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 TRO, and the Court should deny this request.

V. Conclusion

For the foregoing reasons, Petitioner has failed to establish entitlement to the extraordinary remedy of a temporary restraining order. His claims fall outside habeas jurisdiction under *Pinson*, he has received constitutionally adequate process under *Diaz*, he has not demonstrated irreparable harm given the availability of administrative relief under 8 C.F.R. § 1003.19(e), and the balance of equities and public interest weigh against granting relief. Respondents respectfully request that this Court deny Petitioner's Motion for Temporary Restraining Order.

Respectfully submitted this 29th day of September 2025.

SIGAL CHATTAH
Acting United States Attorney

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney