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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 EMMANUEL I. McSWEENEY,
12
13 Petitioner,

14 v.

15 WARDEN OF THE OTAY MESA
16 DETENTION FACILITY, et al.,
17 Respondents.

Case No.: 25-cv-02488-RBM-DEB

**RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I.

INTRODUCTION

In his motion for a temporary restraining order (TRO), Petitioner claims he is a citizen of the Bahamas, not Haiti. For this reason, he alleges that he should be removed to the Bahamas. And he seeks a TRO against his removal to Haiti. Petitioner further contends that his removal should be enjoined so he can bring a motion to reopen his case before the IJ who issued the removal order. His alleged purpose is to establish he is not a Haitian citizen.

But Petitioner's assertion that he is a citizen of the Bahamas contradicts his own admissions made in various official documents—including his Petition filed with the Court. There, he admits that the Bahamas does not recognize him as a citizen. He also has admitted in his applications for Temporary Protected Status (TPS) that although he was born in the Bahamas, he is a Haitian citizen. Such admissions with respect to immigration matters should be treated as substantial and probative evidence. *See Paointhara v. I.N.S.*, 708 F.2d 472, 474 (9th Cir. 1983) (admissions by counsel in deportation proceedings may constitute substantial and probative evidence). The same Haitian citizenship also is reflected in other documents, including Petitioner's Certificate of Identity issued to him by the Bahamas for the purpose of international travel when he was a child.

Given Petitioner's admissions, and the abundance of evidence demonstrating his Haitian citizenship, Petitioner cannot meet his burden to show a likelihood of prevailing on the merits as required to support his motion for a TRO. As discussed below, Petitioner's other miscellaneous arguments also lack merit. For these reasons, the motion for a TRO should be denied.

II.

LEGAL STANDARD FOR ISSUANCE OF A TRO

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., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary

1 restraining order, a plaintiff or petitioner must “establish that he is likely to succeed on the
2 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
3 the balance of equities tips in his favor, and that an injunction is in the public interest.”
4 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S.
5 418, 426 (2009). Petitioner must demonstrate a “substantial case for relief on the merits.”
6 *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When “a plaintiff has failed
7 to show the likelihood of success on the merits, we need not consider the remaining three
8 [Winter factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). *See also*
9 *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief
10 “must show either (1) a probability of success on the merits and the possibility of irreparable
11 harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply
12 in the moving party’s favor.”) (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir.
13 2001)).

14 III.

15 PETITIONER CANNOT MEET THE REQUIREMENTS FOR A TRO

16 A. Petitioner Cannot Show a Likelihood of Success on the Merits

17 Petitioner alleges he is a citizen of the Bahamas; and that he “is now being removed
18 to Haiti based on an error that he is not a citizen of the Bahamas.” [Motion for TRO
19 (“Motion”), ECF No. 12, p. 7:25-26.] He further contends that because of his alleged
20 Bahamian citizenship, he should be removed to the Bahamas, not Haiti. [*Id.*, p. 8:12-13.]
21 And he asserts that the IJ designated the Bahamas, not Haiti, as the country of removal. [*Id.*,
22 p. 4:19-20.]

23 Notwithstanding Petitioner’s allegations, he cannot show a likelihood of success on
24 the merits. First, Petitioner is not likely to meet his burden to show he is a citizen of the
25 Bahamas. In fact, Petitioner should be estopped from contradicting his Petition where he
26 admits that the Bahamas does not recognize him as a citizen. As he alleges in the Petition,
27 “My home country [Bahamas] does not consider me a citizen, I am not a citizen of any
28

1 country.” [Petition, ECF No. 1, ¶ 19.] A Petitioner’s Certificate of Identity issued by the
2 Bahamas also lists his nationality as Haitian. [Certificate of Nationality, Notice of Filing of
3 Supplemental Records (“NFSR”), Exhibit 2.] The same is true for the Form I-213 dated
4 February 26, 2020 [Table of Exhibits filed with Response to Petition (TOE), Exh. 1, ECF
5 No. 9-2, p. 3] and the Form I-213 dated March 18, 2025 [TOE Exh. 4, ECF No. 9-2, p. 16].
6 Moreover, Petitioner at one time had a Haitian passport. [Form I-213 dated February 26,
7 2020, ECF No. 9-2, p. 3.]

8 Petitioner also availed himself of the Temporary Protected Status (TPS) program
9 multiple times. [Form I-313, dated March 18, 2025, ECF No. 9-2, p. 19, TOE, Exh. 4.] In
10 his Form I-821 application for renewal of his TPS status submitted on September 18, 2023,
11 Petitioner stated that he was born in the Bahamas, but that he was a citizen of **Haiti**. [Form
12 I-821, NFSR, Exh. 2.) He also designated Haiti as the TPS country under which he was
13 applying. [*Id.*]¹ The TPS program at the time was available to Haitian citizens, not those
14 from the Bahamas. Petitioner also failed to list his history of criminal activity on the
15 application. Once discovered by ICE during its investigation, the criminal history
16 constituted one of the reasons for denial of the application. [Notice of Intent to Deny,
17 attached to the Form I-821, NFSR, Exh. 2.]

18 In the motion for a TRO, Petitioner also states that the IJ designated the Bahamas as
19 the only option for removal. To the contrary, on May 21, 2020, the IJ ordered Petitioner
20 removed from the United States to the Bahamas **or, in the alternative, Haiti**. [Removal
21 Order, TOE, Exh. 2, ECF No. 9-2, p. 8; Declaration of Jason Cole (“Cole Decl.”), ¶ 3.] The
22 option of removal to Haiti is plainly set forth in the order.

23 Petitioner also contends that he plans to file a motion with the IJ in Miami, Florida to
24 reconsider or reopen his removal proceedings. [Motion, p. 3:10-12.] But it is too late to do
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26
27 ¹ Petitioner likely made the same representations of Haitian citizenship in prior applications
28 for the TPS program. This is so because the Form I-821 application lodged as an exhibit
sought an extension of his existing TPS status.

1 so. A motion to reopen must be filed within 90 days of the final order. *See* 8 CFR
2 1003.23(b)(1). In the case of Petitioner, the BIA dismissed his appeal of the IJ's removal
3 order on April 20, 2021. (BIA Decision, TOE, Exh. 3.) Therefore, Petitioner's removal
4 order became final on the same day—April 20, 2021. *See* 8 C.F.R. § 1241.1(a). There are
5 exceptions to the time limit for certain cases, such when a motion to reopen is based on an
6 asylum request due to changed circumstances. But the new evidence must be material and
7 not available, or could not have been presented, at a prior hearing. 8 CFR 1003.23(b)(4)(i).
8 The fact that the IJ listed Haiti as an alternate country, as well as Petitioner's own
9 admissions in his applications for TPS in the United States, shows that Petitioner's
10 citizenship in Haiti is not a new fact which could justify reopening the IJ proceedings.
11 Petitioner does not meet the exceptions.

12 Petitioner also contends that he was not provided with the reasons for revocation of
13 his supervised release or provided an interview under 8 C.F.R. 241.4(i)(3). But by his own
14 admission, ICE may re-detain an immigrant on supervision, who is subject to a removal
15 order, without providing an opportunity for an interview or to contest the detention if the
16 noncitizen likely can be removed in the reasonably foreseeable future. [Motion, ECF No.
17 12, pp. 12-13.] That is what ICE did in this case. [Form I-213 dated March 18, 2025 [TOE
18 Exh. 4, ECF No. 9-2, p. 18 (“Alien will remain in ICE custody pending removal.”)].

19 Even if Petitioner did not fall under the foregoing exception, he nonetheless was
20 contacted by ICE prior to his March 18, 2025 detention, and he provided ICE with
21 information related to ICE's detention decision, on February 25, 2025. [*See* Decision to
22 Continue Detention, ECF No. 9-2, p. 22, TOE Exh. 5 (“This decision has been made based
23 on a review of your file, **consideration of the information you submitted to ICE's**
24 **reviewing officials on February 25, 2025**, and upon review of the factors for consideration
25 set forth at 8 C.F.R. §241.4(e), (f), and (g).”)].² He then was afforded an interview as part
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28 ² Petitioner was detained at the ICE office in Miramar, Florida. [*See* ECF No. 9-2, p. 18.]
Because of the expedited nature of these TRO proceedings, Respondents have not yet been

1 of the review of his custody status under 8 C.F.R. §241.4(e). [Notice of Interview and Notes,
2 ECF No. 9-2, p. 31-33, TOE, Exh. 6; Cole Decl., ¶ 10.]

3 On September 11, 2025, ICE determined, after conducting the review, that Petitioner
4 should remain in custody. [Decision to Continue Detention, TOE, Exh. 4, ECF No. 9-2, pp.
5 22-25.] ICE based its decision, in part, on Petitioner's numerous criminal convictions,
6 including for hallucinogen possession, fraud-impersonating, burglary and grand theft. [*Id.*]
7 ICE concluded that Petitioner poses both a risk to public safety and a significant flight risk.
8 [*Id.*] He also has not demonstrated to ICE that he is not a danger to the community or U.S.
9 security. [*Id.*] On September 19, 2025, as part of the review of his detention status, Petitioner
10 was provided a personal interview pursuant to 8 C.F.R. 241.4(i)(3). [Notice of Interview
11 and Notes, TOE, Exh. 6, ECF No. 9-2, pp. 27-33; Cole Decl., ¶ 10.)

12 Finally, Petitioner contends he has not had an opportunity to make a credible fear
13 application. But Petitioner has known since 2020, when he learned of the IJ's removal order,
14 that Haiti was one of two countries to which he could be removed. It is written right on the
15 face of the removal order. Five years have passed—more than enough time for Petitioner to
16 raise the issue through the appropriate procedures. Because Petitioner cannot show
17 likelihood of success on the merits, the Court should deny his motion for temporary
18 restraining order.

19 **B. Petitioner is Set for Removal without Further Delay**

20 As discussed above, the IJ ordered Petitioner removed to the Bahamas or, in the
21 alternative Haiti. On September 23, 2025, the Bahamian Consulate provided ICE
22 Enforcement and Removal Operations (ERO) with email correspondence confirming that
23 the Petitioner is not a citizen of the Bahamas. (Cole Decl., ¶ 10.) On September 30, 2025, a
24 travel document for Haiti was obtained for the Petitioner. *Id.* Absent a Court order barring
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26 able to obtain all the records from that detention. Respondents note, however, that the
27 Decision to Continue Detention [ECF No. 9-2, p. 22] reflects that Petitioner submitted
28 information to ICE's reviewing officials on February 25, 2025, suggesting Petitioner
received notice regarding ICE's intention to detain him.

1 Petitioner's removal, it is scheduled to occur on October 8, 2025. At bottom line, Petitioner
2 attempts to establish that he has not received due process regarding this removal. But the
3 record before the Court demonstrates that Petitioner has had notice and opportunity through
4 the immigration proceedings to present his arguments regarding the appropriateness of his
5 removal to Haiti. The Court should not further delay Petitioner's removal at this time.

6 **IV.**

7 **CONCLUSION**

8 For the foregoing reasons, Respondents respectfully request that the Court deny the
9 motion for a temporary restraining order.

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11 DATED: October 3, 2025

Respectfully submitted,

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14
15 s/ Ernest Cordero, Jr.
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