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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Frandy Joseph,

Petitioner,

v.

David R. Rivas, et al.,

Respondents.

No. CV-25-03754-PHX-DJH (CDB)

RESPONSE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Respondents David R. Rivas, Warden, San Luis Regional Detention Center; Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs Enforcement (ICE), Kristi Noem, Secretary of Department of Homeland Security (DHS), and Pamela Jo Bondi, Attorney General of the United States (Respondents), through undersigned counsel, respond in opposition to Petitioner's Motion for Preliminary Injunction (PI) and Temporary Restraining Order (TRO). Doc. 3. Petitioner Frandy Joseph, a citizen and national of Haiti, is validly detained pursuant to a final order of removal following several criminal convictions. The Court should deny Petitioner's request for injunctive relief because ICE is actively working on effectuating Petitioner's removal to Haiti, rebutting any claims that there is no significant likelihood that he will be removed to Haiti in the reasonably foreseeable future. Petitioner thus cannot establish a likelihood of

success on the merits, irreparable harm, and the public interest and balance of equities favors the government. His request should be denied. This response is supported by the following Memorandum of Points and Authorities and attached declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background.

Petitioner Joseph Frandy (Petitioner) is a national and citizen of Haiti. *See* Declaration of Jorge Hernandez, Deportation Officer (DO), attached as Exhibit A, at ¶ 4. He was born on [redacted] in Port Au Prince, Haiti. *Id.* He entered the United States on February 26, 1995, as a Lawful Permanent Resident. *Id.* at ¶ 5. His application for naturalization, Form N-400, was denied by the United States Citizenship and Immigration Service (USCIS) on October 12, 2023. *Id.*

Petitioner has a significant criminal history. On March 28, 1997, Petitioner was arrested in Miami-Dade County, Florida of larceny. *Id.* at ¶ 7. He was convicted on April 18, 1997. *Id.* On January 1, 2007, Petitioner was arrested in Miami-Dade, Florida for violating Fla. Stat. Ann. § 784.021, aggravated assault with a weapon, and he was convicted on December 10, 2007, under Fla. Stat. Ann. § 784.3, domestic battery. *Id.* at ¶ 8. On April 22, 2008, Petitioner was arrested in Roswell, Georgia for violating GA. Stat. §§ 16-7-21, criminal trespass and 16-5-23, battery, and he was convicted of both offenses on May 5, 2008, and sentenced to 11 months in jail. *Id.* at ¶ 9. On July 5, 2023, Petitioner was arrested in Boynton Beach, Florida for violating Fla. Stat. §§§§ 812.014.2c6, vehicle theft, 893.13.6a, possession of cocaine, 787.01.1b, kidnapping of a minor under the age of 13, and 810.02.3a, burglary, and he was convicted on August 31, 2023, under Fla. Stat. §§§§ 812.014.2c6, vehicle theft, 893.136a, possession of cocaine, and 810.08.2b, trespass of an occupied structure. *Id.* at ¶ 10. He was sentenced to serve 6 months for each offense. *Id.* On October 18, 2023, while Petitioner was serving his criminal sentence, he was arrested and charged for violating Fla. Stat. §§ 784.021.1A, aggravated assault, and 784.082.3, battery by person detained in jail. *Id.* at ¶ 11. According to records, those charges were dropped on November 27, 2023. *Id.*

On October 18, 2023, ICE issued a detainer requesting notification of Petitioner's release from criminal custody to initiate removal proceedings. *Id.* at ¶ 12. On March 17, 2024, Petitioner was transferred to ICE custody and detained at the Krome North Service Processing Center (Krome) in Miami, Florida following his release from criminal custody. *Id.* at ¶ 13. He was placed into removal proceedings pursuant to sections 237(a)(2)(B)(i) of the Immigration and Nationality Act (INA), an alien who at any time after admission to the United States has been convicted of a controlled substance offense, and section 237(a)(2)(A)(iii), an alien who at any time after admission has been convicted of an aggravated felony as defined under INA section 101(a)(43)(B), a drug trafficking offense. *Id.* at ¶ 14. On September 9, 2024, an Immigration Judge (IJ) ordered Petitioner removed to Haiti. *Id.* at ¶ 15. He appealed to the Board of Immigration Appeals (BIA), and his appeal was dismissed on February 26, 2025. *Id.* at ¶ 16. The Eleventh Circuit dismissed his Petition for Review on August 1, 2025. *Id.* at ¶ 17. He was detained at Krome North Service Processing Center in Miami, Florida on March 18, 2024, and transferred to the Otay Mesa Detention Center in San Diego, California on March 28, 2025. *Id.* at ¶¶ 18-19. He was then transferred to the San Luis Detention Center on May 18, 2025. *Id.* at ¶ 20.

To effectuate Petitioner's removal to Haiti, ICE Enforcement and Removal Operations (ERO) must first receive approval from the Haitian government for removal. *Id.* at ¶ 21. Once ERO has approval, the field generates an I-296, and that I-296 is then used as the ID document and travel document (TD) for removal. *Id.* ERO will then schedule a flight for petitioner. *Id.* Since his removal became final, ERO has worked expeditiously to effectuate Petitioner's removal to Haiti. *Id.* These removal efforts remain ongoing. *Id.* Once ERO receives approval for removal from the Haitian government, the field will generate I-269 and his removal can be effectuated promptly. *Id.* at ¶ 24. ICE has been routinely obtaining approval for removal of Haitian citizens by the Haitian government and ICE routinely has flights to Haiti. *Id.* at ¶ 23.

II. Temporary Restraining Orders and Preliminary Injunctions Standard.

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. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). 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., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[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 carries a "heavy" burden. *Id.*

A preliminary injunction can take two forms. A "prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to

take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied "unless extreme or very serious damage will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

III. ARGUMENT.

A. Standard Governing Detention of Aliens Pending Removal.

The detention, release, and removal of aliens subject to a final order of removal is governed by § 241 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the United States after an order of removal becomes final. During this "removal period," detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been removed and remains in the United States, his detention may be continued, or he may be released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3) and (6). Under this section, ICE may detain an alien for a "reasonable time" necessary to effectuate the alien's deportation. INA § 241(a), 8 U.S.C. § 1231(a). Indefinite detention is not authorized. 8 U.S.C. § 1231(a). However, an alien ordered removed under INA § 237(a)(2) (which includes aggravated felonies) may be detained for a longer period. *See* 8 U.S.C. § 1231(a)(6).

Furthermore, the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), defined six months as a presumptively reasonable period of detention. *Zadvydas* places the burden

on the alien to show, after a detention period of six months, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the alien makes that showing, the Government must then introduce evidence to refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The Court must "ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699. Here, Petitioner's detention, which is not prolonged, is governed by 8 U.S.C. § 1231 and *Zadvydas*. Petitioner became subject to a final order of removal on February 26, 2025.

B. Petitioner Has Not Met His Burden to Establish There Is No Substantial Likelihood of Removal in the Reasonably Foreseeable Future.

Petitioner has the burden to show that his removal is not likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the Government to show that removal is substantially likely in the reasonably foreseeable future. *Id.* Petitioner has not met his burden to show that his removal is unlikely in the reasonably foreseeable future and, even if he could, the Government can overcome that with evidence showing that removal is likely.

In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable period of time to allow the government to remove an alien detained under 8 U.S.C. § 1231(a)(6), but an alien is not entitled to release after six months detention. *Id.* at 701 ("This 6-month presumption, of course, *does not mean that every alien not removed must be released after six months.* To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.") (emphasis added). The passage of time alone is insufficient to establish that no substantial likelihood of removal exists in the reasonably

foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In *Lema,* where the petitioner had been detained for more than a year, the district court held that the passage of time was only the first step in the analysis, and that the petitioner must then provide good reason to believe that no significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

Petitioner has not met his burden and provides no facts or evidence establishing that Respondents are "no closer to effectuating his removal than they were on the day his removal order became final." Doc. 1 at 6. Even if Petitioner had met his burden showing that his removal to Haiti is not significantly likely to occur in the reasonably foreseeable future, the Government rebuts that presumption with evidence showing recent efforts to effectuate his removal. As established, ICE must comply with a specific process for removals to Haiti. ERO must first receive approval from the Haitian government for removal. Ex. A at ¶ 21. Once ERO has approval, the field generates an I-296, and that I-296 is then used as the ID document and TD for removal. *Id.* ERO will then schedule a flight for petitioner. *Id.* Since his removal became final, ERO has worked expeditiously to effectuate Petitioner's removal to Haiti. *Id.* Unexpectedly, these removal efforts remain ongoing. *Id.* Once ERO receives approval for removal from the Haitian government, the field will generate I-269 and his removal can be effectuated promptly. *Id.* at ¶ 24. There is an expectation he will be removed because ICE has been routinely obtaining approval for removal of Haitian citizens by the Haitian government and ICE routinely has flights to Haiti. *Id.* at ¶ 23. DO Jorge Hernanez noted that in his experience and having reviewed the progress of ERO's request for the Haitian government to approve the removal of Petitioner, there is a significant likelihood that he will be removed to Haiti in the reasonably foreseeable future. *Id.* at ¶ 22.

Uncertainty as to Petitioner's exact removal date does not warrant his release. *See Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008) (alien detained for more than three years did not mean that removal was no longer "reasonably foreseeable"). Additionally, Petitioner's second claim that his due process rights are violated because ICE has not given

him sufficient notice of any proposed third country removal, and an opportunity to request relief, is moot as ICE is not considering removal to any countries besides Haiti. Doc. 1 at 7. Based on the foregoing, Petitioner's continued detention is not indefinite and remains both authorized and constitutional.

IV. A PRELIMINARY INJUNCTION IS NOT WARRANTED.

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result" but is instead an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)).

A. Plaintiff Cannot Establish a Likelihood of Success on the Merits.

For all the reasons argued above, Petitioner cannot establish a likelihood of success on the merits of his habeas petition. Petitioner cannot meet his burden relying on the sole assertion that Respondents are "no closer to effectuating his removal than they were on the day his removal order became final," and pointing to the passage of time. Doc. 1 at 6. But as noted, even if Petitioner had met his burden, the government has rebutted that presumption through ICE/ERO's recent actions and developments indicating ongoing efforts to remove him to Haiti. *See* Ex. A at ¶¶ 21-24. Therefore, Petitioner is unlikely to succeed on the merits of his habeas claim and is not entitled to injunctive relief. For these reasons, the Court should deny Petitioner's request for injunctive relief.

B. Plaintiff Cannot Establish Irreparable Harm.

The only claim Petitioner makes with respect to irreparable harm is that his "illegal confinement is quintessentially irreparable harm." Doc. 3 at 2. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. It is undisputed that Petitioner is subject to a valid final order of removal. He

has provided no particularized facts showing that concrete, imminent harm, especially in light of the governments' recent efforts to effectuate removal to Haiti.

C. The Public Interest and Balance of the Equities Favors the Government.

Where the Government is the opposing party, the balance of equities and public interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party, courts "cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the applicant's favor." *Id.* at 436 (citation and internal quotation marks omitted). Here, the public interest weighs in favor of denying the motion for a preliminary injunction. "Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest lies in the Executive's ability to enforce U.S. immigration laws and to keep convicted criminal aliens detained pending execution of their removal orders. Here, ICE is actively effectuating Petitioner's removal to Haiti, as discussed above. The public interest lies in keeping Petitioner, a significant criminal offender, detained to effectuate removal which is the undergirding statutory purpose of 8 U.S.C. § 1231.

V. CONCLUSION.

For the reasons set forth above, Respondents respectfully request the Motion for Temporary Restraining Order and a Preliminary Injunction be denied.

Respectfully submitted on October 24, 2025.

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