

JUDGE DAVID BRIONES
UNITED STATES COURT
FOR THE WESTERN DISTRICT OF TEXAS

Lesly Nerk Pierre Junior,



Petitioner,

FILED
JAN 29 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY AM DEPUTY CLERK

EP 26CV0227

v.

Pam Bondi, ATTORNEY GENERAL,
Kristi Noem, SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY,
Maria Deandra Ybara, U.S. ICE FIELD OFFICE DIRECTOR,

Respondents

PRELIMINARY INJUNCTION
IN THE
PETITION FOR A WRIT OF HABEAS CORPUS

BACKGROUND

1. Petitioner, Lesly Nerk Pierre Junior, hereby files this preliminary injunction with this Court in his petition for a writ of habeas corpus.

CUSTODY

2. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs

Enforcement (“ICE”). Petitioner is detained at the El Paso Processing Center in El Paso, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

3. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §2241, Art.I §9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. §1331, as Petitioner is presently in custody under color of the authority of the United States., and such custody is in violation of the Constitution, laws, or treaties of the United States.

LEGAL FRAMEWORK

4. Federal Rule of Civil Procedure 65 governs Temporary Restraining Orders (TRO) and Preliminary Injunctions. The purpose of a TRO is to “preserve the status quo and prevent irreparable harm just so long as is necessary to hold a hearing.” *Granny Goose Foods, Inc. v. Bhd. Of Teamsters and Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974). A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such a relief”. *Winter v. NRDC, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

5. The standard for issuing a TRO is “substantially identical” to the standard for issuing a PRELIMINARY INJUNCTION. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F. 3d 832, 839 n 7 (9th Cir. 2001). A party seeking a TRO must demonstrate: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20. These four factors – the Winter factors – must be shown whenever injunctive relief is sought. *All. For the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1135 (9th Cir. 2011).

(A) LIKELIHOOD OF SUCCESS ON THE MERITS:

6. The first Winter factor, THE LIKELIHOOD OF SUCCESS ON THE MERITS, “is a threshold inquiry and is the most important factor in any motion of preliminary injunction”.

Baird v. Bonta, 81 F. 4th 1036, 1040 (9th Cir. 2023) Petitioner raises three (3) grounds for relief in his habeas corpus petition.

7. (I) STATUTORY VIOLATION: Petitioner’s continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. The six-month presumptively reasonable period for continued removal efforts has expired and the petitioner has now been detained for over six (6) months with no changes to the Petitioner’s deportation in the foreseeable future. The Supreme Court held in *Zadvydas* and *Martinez* that ICE’s continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonable and in violation of 8 U.S.C. §1231(a). 533 U.S. at 701.

8. (II) SUBSTANTIVE DUE PROCESS VIOLATION: Petitioner’s continued detention violates Petitioner’s right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint. See. *Tam v. INS*, 14 F.Supp. 2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights). The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner’s liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien’s removal, because any other reading would go beyond the government’s articulated interest—to effect the alien’s removal. See *Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner’s substantive due process rights were violated, and noting that “If deportation can never occur, the government’s primary legitimate purpose in detention—executing removal—is nonsensical.”)

9. (III) PROCEDURAL DUE PROCESS VIOLATION: Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner's right to procedural due process.

(B) IRREPARABLE HARM

10. In the Ninth Circuit the Court has recognized the "irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities" and "the economic burdens imposed on detainees and their families as a result of detention". *Hernandez v. Sessions*, 872 F. 3d 976, 995 (9th Cir. 2017)

11. Petitioner has a pre-diabetic condition that has been getting worse.

13. The Petitioner's family has been suffering great financial and moral hardships since his detention. His family has been under hardships due to his prolonged detention.

14. Further, "it is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury". *Melendres v. Arpaio*, 695 F. 3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2D 547 (1976)) Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F. 3d 989, 1001-02 (9th Cir. 2005). The 9th Circuit has also noted that "unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez*, 872 F. 3d at 999.

(C) BALANCE OF THE EQUITIES AND PUBLIC INTEREST

15. The last two Winter factors merge when the Government is the opposing party as is the case

here. *See Drakes Bay Oyester Co. v. Jewell*, 747 F. 3d 1073, 1092 (9th Cir. 2014). (citing *Nken v. Holder*, 556 U.S. 418 435, 119 S. Ct. 1749, 173 L. Ed. 2D 550 (2009)). Here the balance of the equities and the public interest tip sharply in the Petitioner's favor. Preventing the violation of constitutional rights serves the public interest. *Preminger v. Principi*, 422 F. 3d 815, 826 (9th Cir. 2005); see also, *Melendres v. Arpaio*, 695 F. 3d at 1002 ("it is always in the public interest to prevent the violation of a party's constitutional rights".)

IN CONCLUSION:

16. The Petitioner is a citizen of the United Kingdom. The Petitioner has been detained for over six (6) months with continues misinformation from ICE on his removal. The latest update from ICE officials is that they can not execute his removal because they do not have the monetary funds.

18. The Petitioner is faced with "irreparable harm" because of his detention due to his medical condition.

19. The Petitioner's motion for Preliminary Injunction meets the Winter factors described in paragraphs 4 and 5.

RELIEF REQUESTED

20. The Petitioner respectfully asks this Honorable Court to grant his Preliminary Injunction and to order Immediate Release under reasonable conditions of supervision or;

21. To order the government to execute removal to the United Kingdom within 21 days.

I affirm, under penalty of perjury, that the foregoing is true and correct. Respectfully submitted
this Jan, 26, 26 .



Lesly Nerk Pierre Junior, *Pro Se*



El Paso SPC
8915 Montana Ave
El Paso, Texas 79925

