

District Judge John H. Chun

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DMYTRO MALAKHOV,

Petitioner,

v.

BRUCE SCOTT¹, *et al.*,

Respondents.

Case No. 2:26-cv-00646-JHC

FEDERAL RESPONDENT'S
OPPOSITION TO PETITIONER'S
EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER

Noted for Consideration:
March 19, 2026

I. INTRODUCTION

This Court should deny Petitioner's request for a temporary restraining order ("TRO") requiring his release from ICE detention and request to expedite the habeas petition. Dkt. No. 4. Petitioner asserts the same claims in his TRO request as his habeas petition—this is an attempt to expedite his habeas petition without affording Federal Respondents an opportunity to meaningfully investigate his claims. Petitioner's medical concerns have been reviewed and he is receiving appropriate medical care. Petitioner cannot establish a threat of imminent, irreparable

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 harm that would occur if Federal Respondents' are allowed to fully review and file a return within
2 the timeline of this Court's scheduling order.

3 **II. FACTUAL BACKGROUND**

4 Petitioner, a citizen of Ukraine, without legal status in the United States, that is currently
5 detained at the Northwest ICE Processing Center ("NWIPC"). Dkt. 4 at 1-2.²

6 Petitioner is detained at a level 4 facility, meaning it can provide a higher level of care.
7 Declaration of Dr. Eddie Wang ("Dr. Wang Decl."), ¶ 4. Healthcare at the NWIPC is provided
8 by ICE Health Services Corps ("IHSC"). *Id.* This includes a team of family and emergency
9 medicine physicians, nurses, pharmacists, and technicians. *Id.* IHSC will send patients to the
10 emergency department for critical cases. *Id.* In cases requiring specialists that are not within the
11 facility, patients are referred to outside medical specialists. *Id.*

12 Petitioner is receiving treatment for issues that he reports to medical personnel. Dr. Wang
13 Decl., ¶¶ 8-22. For example, Petitioner was seen and had his medical history confirmed on
14 December 30, 2025. Dr. Wang Decl., ¶ 8. Labs were ordered and a referral was placed based on
15 those on Petitioner's reports. *Id.* Additional labs were ordered when Petitioner was identified as
16 Class B Tuberculosis. Dr. Wang Decl., ¶ 9. Based on the lab results, a nephrology referral was
17 made and medication adjusted. Dr. Wang Decl., ¶ 11. By February 8, 2026, Petitioner's lab results
18 showed improvement in his creatine levels and kidney filtration rates. Dr. Wang Decl., ¶ 14.

19 Crystal in a urine analysis was noted on February 12, 2026, but this was addressed via
20 medication and counseling to increase fluid intake while decreasing sugar and salt. Dr. Wang
21 Decl., ¶ 15. Dr. Wang believes that Petitioner is receiving the appropriate standard of care and
22 that Petitioner's medical needs are being met. Dr. Wang Decl., ¶ 23.

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24 ² The undersigned has not yet received a copy of the A-file in this case but anticipates receiving a copy prior to the March 31, 2026 deadline for filing the return.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is “substantially identical” to the standard for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). “It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). 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. *See Winter*, 555 U.S. at 20 (“*Winter* factors”).

“A preliminary injunction can take two forms.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). “A prohibitory injunction prohibits a party from acting and ‘preserves the status quo pending a determination of the action on the merits.’” *Id.* (internal quotation omitted). “A mandatory injunction orders a responsible party to take action.” *Id.*, at 879 (internal quotation omitted). “A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored.” *Id.* (internal quotation omitted). Where a plaintiff seeks mandatory injunctive relief, “courts should be extremely cautious.” *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). Thus, in a mandatory injunction request, the moving party “must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

Here, rather than preserving the status quo, Petitioner seeks mandatory injunctive relief in the form of an order requiring his immediate release from immigration detention.

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IV. ARGUMENT

A. Petitioner has not established that the law and facts clearly favor injunctive relief.

Petitioner's allegations regarding inadequate medical treatment are not properly brought in this habeas. Even if it was determined that Petitioner's medical concerns were not being adequately addressed, the remedy for Petitioner's alleged concerns is not release, but transfer to a detention facility that would properly address the concerns. This Court should not consider Petitioner's conditions of confinement claim as part of a 28 U.S.C. § 2241 habeas corpus petition. *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023). Petitioner does not allege that detention *at any facility* would be unlawful or unconstitutional. As such, this is a challenge to the conditions of Petitioner's confinement at the NWIPC and not a direct challenge to the legality or duration of his confinement. Thus, "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *see also Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (challenges to conditions of confinement are pursued in a civil rights action).

While courts in this District have adjudicated conditions of confinement claims related to the COVID-19 pandemic, those cases were decided under unique circumstances not present here. *See, e.g., Dawson v. Asher*, No. 20-cv-0409, 2020 WL 1704324, at *8-9 (W.D. Wash. Apr. 8, 2020) (explaining the circumstances under which the Court undertook consideration of COVID-19-related conditions of confinement claims in petitions brought under 28 U.S.C. § 2241). Accordingly, this Court should decline to extend such consideration to the claims in this case.

B. Petitioner has not demonstrated irreparable harm.

Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury."

1 *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los*
2 *Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th
3 Cir.1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555
4 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of irreparable harm is
5 inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary
6 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
7 *Winter*, 555 U.S. at 22.

8 Petitioner asserts – without any supporting evidence – that he should be released due to
9 “urgent medical risks” and he is at risk of “permanent organ damage or other serious
10 complications that cannot be remedied later.” Dkt. 4 at 1, 3. However, Petitioner’s allegations are
11 overstated. Petitioner is receiving appropriate medical care, including referrals to outside
12 specialists—there is no medical evidence of the extreme level of harm alleged by Petitioner.
13 Indeed, Petitioner’s kidney function appears to have improved compared to when he first arrived
14 at the NWIPC. Dr. Wang Decl., ¶¶ 8, 11, 14, 22.

15 Accordingly, Petitioner has not demonstrated that he will be subject to immediate
16 irreparable injury if not released.

17 **C. The balance of the interests and public interests favor the Government.**

18 The balance of equities and public-interest components of the preliminary injunction
19 analysis typically “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S.
20 418, 435 (2009). It is well settled that the public interest in enforcement of United States’
21 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-
22 58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The
23 Supreme Court has recognized that the public interest in enforcement of the immigration laws is
24

1 significant.”) (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a public interest in
2 prompt execution of removal orders).

3 Petitioner’s request for immediate release and an expedited hearing are attempts to get
4 release without affording the Government an adequate opportunity to respond. Petitioner requests
5 that this Court grant him ultimate habeas relief—release from custody—while using the severely
6 shortened briefing schedule for a TRO motion to functionally foreclose Federal Respondents’
7 ability to meaningfully investigate and respond to his claims. *See Guy v. Tanner*, No. 13-cv-
8 6750, 2014 WL 2818684, at *3 (E.D. La. June 23, 2014) (“[petitioner’s] motion [for TRO] is no
9 more than a veiled attempt to expedite the resolution of his habeas petition”).

10 This Court’s briefing schedule addresses the need for expedited briefing and the prompt
11 adjudication of this habeas matter. This District recently issued General Order No. 05-25 for the
12 purposes of facilitating prompt adjudication of habeas petitions. Accordingly, this Court has set
13 a scheduling order whereby Federal Respondents must respond to the habeas petition by March
14 31, 2026. Dkt. 5, Scheduling Order. The briefing and adjudication of the habeas petition in the
15 ordinary course are the appropriate mechanism for resolving the legal issues presented in the TRO
16 Motion.

17 Accordingly, this Court should deny the TRO Motion and require Petitioner to abide by
18 the pending scheduling order.

19 **CONCLUSION**

20 For the foregoing reasons, Petitioner’s Motions should be denied.

21 //

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1 DATED this 19th day of March, 2026.

2 Respectfully submitted,

3 s/ Jordan C. Steveson

4 JORDAN C. STEVESON, WSBA No. 40636

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12 *Attorney for Federal Respondents*

13 *I certify that this memorandum contains 1,576*
14 *words, in compliance with Local Civil Rules*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on today's date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Dmytro Malakhov *Pro Se Petitioner*
A# [REDACTED]
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

Maryna Malakhova
[REDACTED]

DATED this 19th day of March, 2026.

s/ Katie Reed-Johnson

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