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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 SALIM NIZAR ESMAIL,

14 *Petitioner,*

15 v.

16 KRISTI NOEM, *et al.*,

17 *Respondents.*

No. 2:25-cv-08325-WLH-RAO

**RESPONDENTS' OPPOSITION
TO PETITIONER'S MOTION
FOR PRELIMINARY INJUNCTION**

[Declaration of John Park
filed concurrently herewith]

Hon. Wesley L. Hsu
U.S. District Judge

I. INTRODUCTION

On September 13, 2025, following this Court’s Order, Petitioner was released. Nevertheless, Petitioner seeks further injunctive relief. But for the reasons below, Petitioner is not entitled to any additional injunctive relief. Petitioner’s motion for preliminary injunction should be denied.

First, Petitioner’s release from custody rendered his detention claim moot and he is, thus, without Article III standing. The Ninth Circuit has found mootness arises under such circumstances. And without such standing, he can neither show a likelihood of success on the merits nor irreparable harm as to his detention claim.

Second, Petitioner’s APA challenge to certain conditions attached to his OSUP are meritless. For starters, Petitioner’s attempt to characterize certain such conditions as “new” are belied by his original OSUP—dating back to 2011. *Compare* [Dkt. No. 4-1, at 2](#), *with* [Dkt. No. 9-1, at 6](#). Indeed, his prior OSUP required him to provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document and with any written responses he received. *Id.* As a result, his APA challenge should be deemed untimely by nearly a decade. Nor is the imposition of such requirements arbitrary or capricious. Even Petitioner admits that a person on an OSUP must make a good faith effort to assist in securing a travel document.

Third, this Court rightly found “a fundamental problem” with Petitioner’s Article III standing as to his third country removal claim. But despite this Court’s guidance he does not cure this problem. Instead, he recycles many of the same speculative assertions this Court already rejected, while continuing to speculatively frame his claim. In short, Petitioner fails to establish—as he must—that a direct injury is imminent. In fact, despite his several “updates” post-release, he is conspicuously silent as to any “updates” suggesting his removal is now, in fact, imminent. He hasn’t averred that he was told he would be removed, for example. Nor does he make any mention of travel documents now being secured, either. And even if he could establish Article III standing (he can’t), the relief Petitioner seeks under his third country removal claim should be rejected as a naked

1 attempt to prospectively enjoin Respondents to merely follow the law. As this Court has
2 already stated, Respondents already as a matter of law and protocol must “afford Petitioner
3 a meaningful opportunity to contest his removal to a third country on the basis of fear of
4 persecution or torture.” Dkt. No. 8, at 16 n. 14 (citing 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R.
5 § 200.1; 8 C.F.R. § 208.16-18, 1208.16-18).

6 Accordingly, this Court should deny the Petitioner’s Motion for a Preliminary
7 Injunction.

8 II. BACKGROUND

9 Petitioner Salim Esmail is a native and citizen of Tanzania. Declaration of John
10 Park (Park Decl.), ¶ 3.

11 On or about March 19, 1993, Petitioner was convicted of attempted murder under
12 section 125.25(a) of the New York Penal Law and sentenced to a term of 100 months to
13 25 years. *Id.* ¶ 4.

14 On or about August 18, 2008, Petitioner was ordered removed to Tanzania by an
15 immigration judge. *Id.* ¶ 5. The immigration judge also granted Petitioner deferral of
16 removal to Tanzania under Article III of the United Nations Convention Against Torture.
17 *Id.*

18 On or about October 21, 2011, Petitioner was released from custody on an Order of
19 Supervision (OSUP) with reporting requirements. *Id.* ¶ 6; see Dkt. No. 4-1, at 9.

20 While on OSUP, on or about January 17, 2017, Petitioner was convicted of
21 Elder/Dependent Adult: Harm/Death offense under section 368(B)(1) of the California
22 Penal Code. Park Decl. ¶ 7. He was sentenced to 132 days in jail for that offense. *Id.*

23 On or about July 11, 2025, Homeland Security Investigations (HSI) Los Angeles
24 initiated an investigation regarding Petitioner after it became known he had been a
25 registered voter since February 10, 2022. *Id.* ¶ 8.

26 After that investigation, on or about September 4, 2025, Mr. Esmail’s OSUP was
27 revoked and he was taken into DHS custody. *Id.* ¶ 9.

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1 On or about September 13, 2025, pursuant to this Court’s order, Mr. Esmail was
2 released from DHS custody on an OSUP issued by the ERO office in Eloy, Arizona. *Id.*
3 ¶ 10; *see* Dkt. No. 9-1, at 6.

4 On or about September 22, 2025, ERO Los Angeles re-issued an OSUP for Mr.
5 Esmail and called him to report for service of the new OSUP. Park Decl. ¶ 11, Exh. A (a
6 true and correct copy of the draft OSUP, which ERO Los Angeles will serve Petitioner
7 with once he comes in, as requested).

8 III. ARGUMENT

9 To obtain a preliminary injunction, Petitioner must establish: (1) a likelihood of
10 success on the merits; (2) a likelihood of suffering irreparable injury absent an injunction;
11 (3) the balance of equities tips in his favor; and (4) an injunction favors the public interest.
12 *Cal. Trucking Ass’n v. Bonta*, 996 F.3d 644, 652 (9th Cir. 2020) (citing *Winter v. NRDC*,
13 *Inc.*, 555 U.S. 7, 20 (2008)). When the government is a party, “these last two factors
14 merge.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing
15 *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Petitioner cannot carry his burden.

16 A. Petitioner’s Detention Claim is Now Moot.

17 Where, as here, suit is brought without Article III standing, no “case or controversy”
18 exists and the court lacks subject matter jurisdiction, as a result. U.S. Const. art. III, § 2,
19 cl. 1; *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (“A suit brought by a
20 plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III
21 federal court therefore lacks subject matter jurisdiction over the suit.”). “To establish
22 standing, Petitioner must show that he ‘(1) suffered an injury in fact, (2) that is fairly
23 traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed
24 by a favorable judicial decision.’” Dkt. No. 8, at 15 (quoting *Spokeo, Inc. v. Robins*, 578
25 U.S. 330, 338 (2016)). Petitioner’s detention claim fails at the outset.

26 On September 13, 2025, upon issuance of this Court’s Order, Petitioner was
27 released from custody. Park Decl. ¶ 7. He admits as much. Dkt. No. 9, at 2:17.
28 Accordingly, his release from detention rendered his detention claim moot and he is

1 without Article III standing. *See, e.g., Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir.
2 2007) (“a petitioner’s release from detention under an order of supervision mooted his
3 challenge to the legality of his extended detention”) (cleaned up).

4 And because Petitioner lacks Article III standing, he can neither show a likelihood
5 of success on the merits nor irreparable harm. *See, e.g., Gabriel v. Weber*, 2021 WL
6 3475714, at *2 (N.D. Cal. Aug. 6, 2021) (“[w]ithout Article III standing, Plaintiff cannot
7 show likelihood of success on the merits, let alone irreparable harm”). Accordingly, the
8 Court should deny his motion for a preliminary injunction as to his detention claim.

9 **B. Petitioner’s APA Challenge to His OSUP Conditions is Meritless.**

10 Petitioner challenges certain conditions attached to his OSUP, which he
11 characterizes as “new.”¹ But his original OSUP—dating back to 2011—proves otherwise.
12 Indeed, his prior OSUP required him to “provide ICE with written copies of requests to
13 Embassies or Consulates requesting the issuance of a travel document” and to “provide
14 ICE with written responses from the Embassy or Consulate regarding your request.”
15 *Compare Dkt. No. 4-1, at 9, with Dkt. No. 9-1, at 6.* The time for mounting such a
16 challenge lapsed nearly a decade ago. *See, e.g., Corner Post, Inc. v. Bd. of Governors of*
17 *Fed. Rsrv. Sys.*, 603 U.S. 799, 825 (2024) (holding that an APA claim is subject to 28
18 U.S.C. § 2401(a)’s 6-year statute of limitations upon onset of injury by final agency
19 action).

20 Setting aside the fact that such conditions are demonstrably not “new,” Petitioner
21 admits he “understands that a person on an OSUP must make a good faith effort to assist
22 in securing a travel document.” Dkt. No. 9, at 17:21-22. That ICE’s instructions permit
23 him to contact Embassies and Consulates of his choosing and provide any written
24 responses he receives could not be any more crystal clear than they already are. Such

25
26 ¹ Petitioner also challenges other conditions which he correctly notes were not
27 imposed under his former OSUP, specifically that he register as a sex offender, if
28 applicable, and that he enroll in sexual deviancy program. Respondents have issued a new
OSUP which contain neither such requirement. *See* Park Decl. ¶ 11, Exh. A. Nor does
his new OSUP require him to enroll in a substance abuse program, either. *Id.*
Accordingly, this aspect of his APA challenge is now moot.

1 unambiguous conditions can hardly be described as arbitrary or capricious. Nor does
2 Petitioner come anywhere close to showing otherwise. Nor could he. Indeed, such
3 conditions flow directly from controlling regulations tying his release on an OSUP to his
4 mandatory cooperation in the process of obtaining his own travel documents.
5 See 8 C.F.R. § 241.13(d)(2) (“Compliance and cooperation with removal efforts. The
6 alien shall include with the written request information sufficient to establish his or her
7 compliance with the obligation to effect his or her removal and to cooperate in the process
8 of obtaining necessary travel documents.”). Petitioner cannot show imposition of such
9 conditions clearly overcomes the “highly deferential” arbitrary and capricious standard of
10 review, which “presume[es] the agency action to be valid and affirming the agency action
11 if a reasonable basis exists for its decision.” *US Citrus Sci. Council v. United States Dep’t*
12 *of Agric.*, 312 F. Supp. 3d 884, 893 (E.D. Cal. 2018) (quoting *Ranchers Cattlemen Action*
13 *Legal Fund v. U.S. Dep’t of Agric.*, 499 F.3d 1108, 1115 (9th Cir. 2007)).

14 Accordingly, because Petitioner cannot show a likelihood of success on the
15 merits—“the most important *Winter* factor”—the Court “need not consider the other
16 factors.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017). Even
17 so, it is well settled that the public interest in enforcement of the United States’s
18 immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543,
19 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir.
20 1981) (“The Supreme Court has recognized that the public interest in enforcement of the
21 immigration laws is significant.”) (citing cases). This case is no exception. The Court
22 should reject Petitioner’s baseless and untimely attempt to relieve him from his
23 unambiguous obligation to cooperate in securing travel documents.

24 **C. The Court Should Again Reject Petitioner’s Third Country Removal Claim.**

25 This Court rightly found “a fundamental problem” with his Article III standing as
26 to his third country removal claim and the relief sought. Dkt. No. 8, at 15. Rather than
27 establish otherwise, Petitioner effectively admits his third country removal claim lacks
28 standing, asserting that “if the Court waits for there to be standing, it may too, also be

1 powerless to prevent ICE from implementing its unlawful policy.” Dkt. No. 9, at 7:19-22.
2 At the same time, he recites his previously rejected assertions as to the Noem Memo,
3 which the Court correctly deemed “speculative” and “belied by the language of the Noem
4 Memo itself.” Dkt. No. 8, at 16. Indeed, as before, he continues to speculatively frame
5 his claim. *See, e.g., Dkt. No. 9, at 10:4-5* (“At this point the Petitioner does not know if
6 ICE is attempting to remove him to a third country”).

7 As this Court emphasized, Petitioner must establish that he “immediately in danger
8 of sustaining some direct injury.” Dkt. No. 8, at 17 (quoting *City of Los Angeles v. Lyons*,
9 461 U.S. 95, 102 (1983)); *id.* (quoting *Arpaio v. Obama*, 27 F. Supp. 3d 185, 207 (D.D.C.
10 2014) (“[B]ecause standing is a necessary predicate to any exercise of the Court’s
11 jurisdiction, the plaintiff and its claims have no likelihood of success on the merits, if the
12 plaintiff lacks standing.”)). Tellingly, despite his several updates post-release, he
13 conspicuously silent as to any concrete basis suggesting his removal is, in fact, imminent.
14 In fact, as before, he has not averred that he was told he would be removed. Nor does he
15 make any mention of travel documents now being secured. Instead, Petitioner seeks to
16 strike from his OSUP his obligation to secure such documents. At bottom, Petitioner does
17 nothing to cure his standing problem.

18 Ultimately, Petitioner’s third country removal claim is plainly an attempt to secure
19 an improper follow-the-law injunction. *See, e.g., E.E.O.C. v. AutoZone, Inc.*, 707 F.3d
20 824, 841 (7th Cir. 2013) (“An obey-the-law injunction departs from the traditional
21 equitable principle that injunctions should prohibit no more than the violation established
22 in the litigation or similar conduct reasonably related to the violation.”); *Burton v. City of*
23 *Belle Glade*, 178 F.3d 1175, 1201 (11th Cir. 1999) (“As this injunction would do no more
24 than instruct the City to ‘obey the law,’ we believe that it would not satisfy the specificity
25 requirements of [Federal Rule of Civil Procedure] 65(d) and that it would be incapable of
26 enforcement.”). As the Court rightly stated, “any efforts to remove Petitioner to a third
27 country must comport with due process,” and Respondents already as a matter of law and
28 protocol must “afford Petitioner a meaningful opportunity to contest his removal to a third

country on the basis of fear of persecution or torture.” Dkt. No. 8, at 16 n. 14 (citing 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. § 208.16-18, 1208.16-18). Enjoining Respondents to follow the same, as Petitioner’s third country removal claim seeks to do, would be no more than improperly enjoining the government to follow the law.

Accordingly, because Petitioner cannot show establish Article III standing and the injunction he seeks is improper, he necessarily cannot show a likelihood of success on the merits or irreparable harm as to his third country removal claim. *See, e.g., Gabriel*, 2021 WL 3475714, at *2.

IV. CONCLUSION

For the foregoing reasons, the Respondents respectfully request that Petitioner’s motion for a preliminary injunction be denied.

Dated: September 22, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

Undersigned counsel for Respondents certifies that the memorandum of points and authorities contains 2,327 words in compliance with L.R. 11-6.1's word limit.

Dated: September 22, 2025

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