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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 NELSON MAYOR MARTINEZ,
12 Petitioner,
13 v.
14 WARDEN OF THE GOLDEN STATE
15 ANNEX, *ET AL.*,
16 Respondents.

CASE NO. 1:25-CV-01633-EFB

**OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER (ECF 18)**

On the facts of this case, Petitioner has been afforded constitutionally adequate notice and an opportunity to claim fear of being removed to a third country. Petitioner's motion for a temporary restraining order should, accordingly, be denied.

I. Background

Petitioner is subject to a final removal order, and U.S. Immigration and Customs Enforcement ("ICE") took him into custody in September 2025 with the intention of removing him to a third country, Mexico. During this process, Petitioner was afforded notice of ICE's intention to remove him to Mexico and further given an opportunity to make a claim that he should not be removed to Mexico on fear he would be tortured there. (ECF 8-1, ¶¶ 17-20.) Once he received notice and raised such a fear-based claim, ICE returned Petitioner to the Golden State Annex and brought him before an asylum officer, who interviewed him and assessed his fear claim. (ECF 8-1, ¶ 20.) After the interview, the asylum officer found that Petitioner had not proven it was more likely than not that he would be tortured in Mexico. (ECF 8-1, ¶ 20.) In light of that determination, ICE resumed its removal efforts and transferred him back to the Florence on December 6, 2025 for staging of his removal to Mexico. (ECF 15-1.) Thereafter, the Court temporarily enjoined Respondents from transferring or moving Petitioner, pending further order from this Court.¹ (ECF 14 & 19.)

II. Standard for Temporary Restraining Orders

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res.*

¹ Per the Court's Dec. 12 minute order (ECF 19), the Court enjoined Respondents from moving or transferring Petitioner from the Florence Service Processing Center pending further order from the Court. About seven minutes after the Court issued its minute order, the undersigned forwarded a copy of the order to agency counsel at ICE. Then, about an hour later, ICE counsel responded to acknowledge receipt and confirm that ICE Enforcement and Removal Operations ("ERO") had been notified. ERO made a notation in its system not to transfer Petitioner pursuant to the order. *See* Declaration of Joanna Bayardo ("Bayardo Decl."), ¶ 5.

However, because the Florence Service Processing Center is not intended to house detainees for an extended period of time, ERO had already made plans to transfer Petitioner back to the Golden State Annex. *See* Bayardo Decl., ¶ 4. A miscommunication occurred and ERO effected the planned transfer the next morning to return Petitioner to the Golden State Annex—despite the Dec. 12 minute order and notification to ERO. *See* Bayardo Decl., ¶ 6. Petitioner is currently detained at the Golden State Annex, and ERO has confirmed they will not transfer or move Petitioner out of the Golden State Annex until further order from this Court. *See* Bayardo Decl., ¶¶ 7-8.

1 *Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “[P]laintiffs seeking a preliminary
 2 injunction face a difficult task in proving that they are entitled to this extraordinary remedy.” *Earth*
 3 *Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Plaintiffs’ burden
 4 is aptly described as “heavy.” *Id.* A preliminary injunction requires “substantial proof” and a “clear
 5 showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis omitted). “A plaintiff seeking a
 6 preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to
 7 suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor,
 8 and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)
 9 (internal quotation omitted). Alternatively, a plaintiff can show “serious questions going to the merits
 10 and the balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors
 11 are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

12 As the purpose of preliminary injunctive relief is to preserve the status quo pending final
 13 adjudication on the merits, there is “heightened scrutiny” for mandatory preliminary injunctions, which
 14 is what Petitioner seeks, here.² *Dahl v. HEM Pharms. Corp.* 7 F.3d 1399, 1403 (9th Cir. 1993). Where
 15 “a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente*
 16 *lite*, courts should be extremely cautious about issuing a preliminary injunction.” *Martin v.*
 17 *International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee of Cent.*
 18 *American Refugees v. Immigration and Naturalization Serv.*, 795 F.2d 1434, 1442 (9th Cir. 1986).

19 **III. Argument**

20 Because Petitioner has been afforded constitutionally adequate due process in ICE’s efforts to
 21 remove him to a third country, he cannot show a likelihood of success on the merits of his constitutional
 22 claims. Nor, for that matter, can he show a likelihood of success on the merits of his prolonged
 23 detention claim, for the reasons stated in Respondents’ habeas return. (ECF 8.)

24 “The Due Process Clause requires the government to provide notice reasonably calculated, under
 25 all the circumstances, to apprise interested parties of the pendency of the action and afford them an

26 ² “A mandatory injunction orders a responsible party to take action, while [a] prohibitory
 27 injunction prohibits a party from taking action and preserves the status quo pending a determination of
 28 the action on the merits.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014)
 (internal quotation omitted).

1 opportunity to present their objections.” *Wells Fargo Bank, N.A. v. Mahogany Meadows Ave. Trust*, 979
 2 F.3d 1209, 1217 (9th Cir. 2020) (internal quotations omitted). “A facial challenge requires a plaintiff to
 3 establish that no set of circumstances exists under which a statute would be valid.” *Id.* (internal
 4 quotation omitted). “An as-applied challenge, by contrast, focuses on the statute’s application to the
 5 plaintiff.” *Id.*

6 Petitioner claims in the present TRO motion that he has been denied notice and an opportunity to
 7 contest ICE’s intent to remove him to a third country. (ECF 18, p 3.) He asserts that his removal to
 8 Mexico is being done under an ICE memo, which fails to provide constitutionally adequate due process
 9 because it allows for “flagrantly insufficient notice (6-24 hours)” of a third country removal prior to
 10 execution. (ECF 18, p. 4.) Regardless of what the policy states or what other courts may have held
 11 (ECF 18, p. 4 (collecting cases)), the facts of this case show that Petitioner was afforded constitutionally
 12 adequate notice, here. ICE did not provide Petitioner with notice of a third country of removal 6-24
 13 hours before the imminent execution of his removal. Instead, ICE provided written notice to Petitioner
 14 of their intention to remove him to a third country on October 20, 2025. (ECF 8-5, p. 1.) This written
 15 notice was read to Petitioner in his native language of Spanish. (ECF 8-5, p. 1.) Four days later—not
 16 mere hours—Petitioner claimed fear of removal to Mexico. (ECF 8-1, ¶ 19.) Once Petitioner asserted a
 17 fear claim, ICE transferred Petitioner back and brought before an asylum officer 18 days later, who
 18 interviewed him to assess his fear claim. (ECF 8-1, ¶¶ 19-20.) When the asylum officer found that
 19 Petitioner had not proven it was more likely than not that he would be tortured in Mexico, Petitioner was
 20 informed of this decision in a written notice. (ECF 8-6.) Only after that process was completed did ICE
 21 resumed efforts to remove Petitioner to the third country.

22 On these facts, Petitioner cannot claim that a deficient policy was applied to him or that he was
 23 deprived of due process. Instead, Petitioner was afforded constitutionally adequate notice and an
 24 opportunity to present his fear claim before a neutral asylum officer.

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1 **IV. Conclusion**

2 Petitioner's motion for a temporary restraining order should be denied.

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5 Dated: December 12, 2025

ERIC GRANT
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7 By: /s/ ELLIOT WONG
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