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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JONNY ALEXANDER ESCOBAR,
12 Petitioner,
13 v.
14 CHRISTOPHER CHESTNUT, et al.,
15 Respondents.
16

CASE NO. 1:25-CV-01801-DJC-EFB
UNITED STATES' OPPOSITION TO
EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER

17 The Court should deny petitioner Jonny Alexander Escobar's emergency motion for a temporary
18 restraining order because he is unlikely to succeed on the merits of his underlying petition for writ of
19 habeas corpus. Escobar cannot be in the United States based on his criminal record in his country of
20 origin, where he operated as [REDACTED] for years. Immigration authorities provided
21 Escobar with due process prior to ordering him removed, and there is no indication that immigration
22 authorities will fail to follow their own procedures when designating a third country for Escobar's
23 eventual removal. Finally, the Court should deny Escobar's motion because the relief he seeks in it has
24 already been rejected by the Supreme Court.

25 I. FACTUAL AND PROCEDURAL BACKGROUND

26 Escobar is in the lawful custody of immigration authorities after coming to the United States
27 from El Salvador in September 2022. Emergency Mot. TRO ¶ 16, Dkt. No. 2. Escobar has no
28 connection to the United States and may not stay here because he committed a serious crime in his home

country  *Id.* ¶ 15 (stating that Escobar “is not a citizen of any country besides El Salvador, nor does he have ties to any other country”); Decl. Deportation Officer Marbello Pano ¶¶ 10, 14, Dkt. No. 13-1. Escobar’s removal to El Salvador is deferred, so immigration authorities must remove him to another country. Emergency Mot. TRO ¶ 16; Pano Decl. ¶ 14.

On December 10, 2025, Escobar filed an emergency motion for a temporary restraining order requesting that the Court enjoin his removal to a third country and order immigration authorities to provide specific procedural relief in the future. *See generally* Emergency Mot. TRO. This specific relief includes giving Escobar ten days to claim fear of being removed to a third country, as well as the opportunity to reopen his immigration proceedings if he cannot demonstrate a credible fear claim. *Id.* ¶ 40.

Escobar filed a petition for writ of habeas corpus on the same day he filed his emergency motion for a temporary restraining order. *See* Pet. Writ Habeas Corpus, Dkt. No. 1. His underlying petition does not seek immediate release, but does request much the same relief as his emergency motion for a temporary restraining order. *Id.* at 13. Escobar’s requested relief also substantially mirrors procedures sought to be imposed by aliens who brought a class action in the United States District Court for the District of Massachusetts. *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 392–93 (D. Mass. 2025). The Massachusetts class action originally resulted in a preliminary injunction granting much of the class-wide relief that Escobar seeks in this individual case; however, the Supreme Court of the United States subsequently stayed that injunction and clarified that it is currently “unenforceable.” *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025).

II. LEGAL STANDARD

A. Legal Standard for Temporary Relief

A petitioner seeking a temporary restraining order must demonstrate “(1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (quoting *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012)). The first of these four factors is the most important—where a plaintiff fails to establish likely success on the merits, a district court need not consider the remaining three elements of the analysis. *Id.*

Furthermore, where a petitioner seeks a mandatory injunction requiring the government to do something, “she must establish that the law and facts *clearly favor* her position, not simply that she is likely to succeed.” *Id.* (emphasis in original). Such requested mandatory relief “goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.” *Id.* (emphasis and alteration in original) (quoting *Stanley v. Univ. S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994)).

B. Third-Country Removal Procedures

After the conclusion of removal or reinstatement proceedings, an alien may be subject to a final order of removal but lack a designated country where removal is authorized. In that situation, the Immigration and Nationality Act authorizes immigration authorities to remove the alien to any “country whose government will accept the alien into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii). This same statute protects an alien from removal to a third country “if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” *Id.* § 1231(b)(3)(A). But no statute outlines the particular process an alien must receive prior to third-country removal; instead, Congress delegated that procedural authority to the Executive Branch. Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105–277, § 2242(b), 112 Stat. 2681, 2822 (1998) (instructing “heads of the appropriate agencies [to] prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment”).

On March 30, 2025, the United States Department of Homeland Security issued a guidance memorandum (the “March memorandum”) implementing these procedural obligations for third-country removals. *See* Decl. Lya Ferreyra Supp. Pet. Writ Habeas Corpus Ex. I, Dkt. No. 1-10. The March memorandum distinguishes between removals to countries that have provided credible assurances that any aliens removed there will not be tortured, and removals to those countries that have not done so. For countries that provide such an assurance, “the alien may be removed without the need for further procedures.” *Id.* at 1–2. For countries that have not, immigration authorities must first inform the alien of removal to the country, and give the alien an opportunity to “affirmatively express a fear of persecution or torture” there. *Id.* at 2. If the alien does so, an immigration officer will conduct a prompt

1 screening to determine whether the alien “would more likely than not be persecuted on a statutorily
2 protected ground or tortured in the country of removal.” *Id.* If the alien fails to satisfy this standard, the
3 alien “will be removed.” *Id.* If the alien does satisfy it, additional administrative procedures follow in
4 front of an immigration judge or the Board of Immigration Appeals, or else immigration authorities
5 “may choose to designate another country for removal.” *Id.* at 2.

6 Congress strictly limited judicial review of these regulations issued by the Executive Branch. For
7 instance, the legislation implementing the Convention Against Torture explicitly states:

8 [N]o court shall have jurisdiction to review the regulations adopted to
9 implement this section, and nothing in this section shall be construed as
10 providing any court jurisdiction to consider or review claims raised under
11 the Convention or this section, or any other determination made with
respect to the application of the policy set forth in subsection (a), except as
part of the review of a final order of removal pursuant to section 242 of
the Immigration and Nationality Act (8 U.S.C. 1252).

12 Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105–277,
13 § 2242(d), 112 Stat. 2681, 2822 (1998). Additionally, notwithstanding “section 2241 of Title 28, or any
14 other habeas corpus provision, . . . a petition for review filed with an appropriate court of appeals in
15 accordance with this section shall be the sole and exclusive means for judicial review of any cause or
16 claim under” the Convention Against Torture. 8 U.S.C. § 1252(a)(4). Congress further stripped district
17 courts of jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or
18 action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.”
19 *Id.* § 1252(g). Instead, such claims, along with any other “questions of law and fact . . . arising from any
20 action taken or proceeding brought to remove an alien,” must be brought as part of a petition for review
21 of a final order of removal. *Id.* § 1252(b)(9).

22 III. ARGUMENT

23 The Court should deny Escobar’s emergency motion for a temporary restraining order because
24 he is unlikely to prevail on his underlying habeas petition. First, the Court is without jurisdiction to
25 adjudicate Escobar’s challenge to the execution of his removal order. Second, Escobar fails to establish
26 that his removal to a third country will violate any statute, regulation, or the principles of due process.
27 Third, Escobar’s underlying petition is unlikely to succeed because it is essentially an end-run around an
28 order issued by the Supreme Court.

A. Congress stripped district courts of jurisdiction to consider claims like Escobar's.

Escobar is unlikely to prevail on his underlying habeas petition because federal immigration law divests district courts of jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” *Id.* § 1252(g). Here, Escobar’s underlying habeas petition raises claims arising solely from action taken by—or by actions that Escobar anticipates will be taken by—the Executive Branch to execute a valid removal order (an order which Escobar neither challenges nor appeals). *See Pano Decl.* ¶¶ 13–15. Escobar must file his petition with a court that has jurisdiction to adjudicate it: “an appropriate court of appeals,” which is the “sole and exclusive means for judicial review of any cause or claim under” the Convention Against Torture. 8 U.S.C. § 1252(a)(4). Escobar’s theoretical concerns about whether his removal order will be executed consistent with the March memorandum do not vest the Court with statutory jurisdiction that it otherwise may not exercise. *See id.* § 1252(g).

Because Escobar’s underlying habeas petition relies on assumptions about the Court’s jurisdiction that are unsupported by governing statutes, he is unlikely to prevail in his habeas proceeding. Hence, the Court should deny his motion for an emergency temporary restraining order. *See Garcia*, 786 F.3d at 740.

B. Escobar is unlikely to prevail because his removal to a third country violates no statute, regulation, or principle of due process.

The Court should reject Escobar’s request for a temporary restraining order because he fails to establish that his removal to a third country will violate any statute, regulation, or the principles of due process.

Neither the Immigration and Nationality Act, the legislation implementing the Convention Against Torture, nor any other statute or regulation prescribes a particular process for Convention Against Torture claims vis-à-vis third-country removals, and the March memorandum is consistent with due process. Escobar is subject to a final order of removal and had the opportunity to raise fear-based claims in withholding-only proceedings. *Pano Decl.* ¶¶ 10–14. Escobar did not appeal anything that happened during these various proceedings. *Id.* ¶ 15. The March memorandum provides Escobar with additional procedural protections before removal to a third country, and there is no evidence in this case

1 that immigration authorities will fail to follow the procedures outlined in their own guidance. Hence,
 2 consistent with the March memorandum, Escobar will be given an opportunity to affirmatively state that
 3 he fears removal to any third country and if he does so, he will be screened by an asylum officer to
 4 determine whether he “would more likely than not” be tortured if sent there. *See* Ferreyra Decl. Ex. I.¹

5 Further, Escobar’s challenge to the sufficiency of the March 2025 memorandum is unavailing
 6 because he entered the United States without inspection and admission by an immigration officer. This
 7 means that Escobar is “legally considered to be detained at the border and hence as never having
 8 effected entry into this country.” *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL
 9 3199872, at *7 (C.D. Cal. Nov. 12, 2025) (quoting *Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th
 10 Cir. 2004)). And for aliens like Escobar who were never admitted into the United States, “the decisions
 11 of executive or administrative officers, acting within powers expressly conferred by congress, are due
 12 process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (emphasis added); *see*
 13 *Thuraissigiam*, 591 U.S. at 140 (holding that aliens neither admitted nor paroled into country have “only
 14 those rights regarding admission that Congress has provided by statute” and that “the Due Process
 15 Clause provides nothing more”); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)
 16 (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is
 17 concerned.”).

18 The March memorandum is the political branches’ reasoned judgment as to what process should
 19 be afforded under the Convention Against Torture before an alien is removed to a third country. For an
 20 alien like Escobar who has no right to be in the United States, “the Due Process Clause provides nothing
 21 more.” *Thuraissigiam*, 591 U.S. at 140. Accordingly, Escobar is unlikely to prevail on his underlying
 22 habeas petition and his accompanying motion for temporary restraining order should be denied. *See*
 23 *Garcia*, 786 F.3d at 740 (noting that failure to establish likelihood of success on merits forecloses
 24 injunctive relief).

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26
 27 ¹ The notice and timing of this process is analogous to that provided in expedited removals. *See* 8
 28 U.S.C § 1225(b)(1)(B)(i), (iii)(III). The Supreme Court previously upheld this procedure against a due
 process-based challenge. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–41 (2020).

1 C. Escobar is unlikely to prevail because he requests relief recently rejected by the
2 Supreme Court.

3 The Court should also reject Escobar's motion because the process it seeks to require
4 immigration authorities to follow was recently rejected by the Supreme Court.

5 Interim decisions of the Supreme Court to stay decisions of federal district courts "are not
6 conclusive as to the merits, [but] they inform how a court should exercise its equitable discretion in like
7 cases." *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). Here, Escobar seeks much the same relief as his
8 fellow class members initially obtained in Massachusetts. *See D.V.D.*, 778 F. Supp. 3d at 392–93 (listing
9 procedural mandates on immigration authorities required by district court's since-stayed preliminary
10 injunction). But the Supreme Court stayed that injunctive relief a few months ago. *D.V.D.*, 145 S. Ct. at
11 2629–30. Hence, granting Escobar's requested preliminary and injunctive relief would run afoul of
12 Supreme Court precedent which "squarely control[s]" here. *Boyle*, 145 S. Ct. at 2654. Additionally,
13 Escobar's requested relief would "go[] well beyond simply maintaining the status quo *pendente lite*"
14 because it would compel immigration authorities to take various procedural steps before removing him
15 to a third country. *Garcia*, 786 F.3d at 740. Such relief "is particularly disfavored" even when it does not
16 contravene recent Supreme Court precedent, as Escobar's requested relief does. *Id.*

17 Escobar is unlikely to prevail on his underlying habeas petition because the relief he seeks was
18 recently foreclosed by the Supreme Court. This constitutes yet another reason why the Court should
19 deny his motion for a temporary restraining order. *See id.*

20 IV. CONCLUSION

21 Petitioner Jonny Alexander Escobar asks the Court to enter an unnecessarily duplicative
22 emergency order without proper jurisdiction, and that would contravene recent Supreme Court
23 precedent. The Court should deny his motion.

24 Dated: December 16, 2025

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26 By: /s/ SAM STEFANKI
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