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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

HONORIO LATYR PEREIRA BARRETO, Petitioner v. STATE OF ALASKA, Department of Corrections; ARNALDO HERNANDEZ, Superintendent of the Anchorage Correctional Complex, in his official capacity, et al. Respondents.	Case No. 3:26-cv-00235-SLG

RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner moved for a temporary restraining order ("TRO") requesting he not be transported out of the District of Alaska and requesting his release from custody. Dkt. 5. The Court granted the TRO prohibiting his transfer out of the District. Dkt. 6. The Government hereby files its opposition and requests the Court dissolve the TRO.

I. INTRODUCTION

Petitioner, Honorio Barreto, a native citizen of Senegal, has been lawfully detained by U.S. Immigration and Customs Enforcement ("ICE") during the pendency of his removal proceedings. *See* Dkt. 8. Petitioner has chosen not to request a bond hearing at the immigration court, and instead, has filed the instant petition and application for a Temporary Restraining Order ("TRO") asking that he be immediately released from custody. Bond hearings in Tacoma are typically being held within two weeks following the request.

The issue before this Court, at this stage, is whether Petitioner can be lawfully held. The TRO and injunction sought by Petitioner would inappropriately have this Court, on a time-compressed basis, grant him the ultimate relief that he seeks in his habeas petition without the requisite showing of facts that clearly favor his position. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits").

Petitioner is a native citizen of Senegal. Robinson Decl. ¶ 3. He was admitted on January 14, 2020, on a non-immigrant K1 as a fiancé of a U.S. Citizen. Robinson Decl. ¶ 3. Later that year, on December 3, 2020, Petitioner's status was adjusted by the United States Citizenship and Immigration Services ("USCIS") to that of a permanent resident on a conditional basis, based upon being married to a U.S. citizen. Robinson Decl. ¶ 4. On September 22, 2022, Petitioner filed a Petition to Remove Conditions on Residence (Form I-751). Robinson Decl. ¶ 5. Following his entry to the United States, Petitioner was arrested for Operating Under the Influence on April 15, 2023. Robinson Decl. ¶ 6. He was arrested again for OUI, following a vehicle collision. *Id*. He was also charged for leaving the scene, providing false information, violating conditions of release, and refusal to submit to a chemical test on January 22, 2024. *Id*. On April 6, 2024, he was arrested for violating conditions of release and resisting arrest. *Id*.

On June 21, 2024, USCIS issued Petitioner a request for evidence and gave him 90 days to respond. Robinson Decl. ¶ 7. After Petitioner failed to respond, on October 22, 2024, USCIS issued Petitioner a decision on his application for failing to respond to its request and terminated his conditional permanent resident status. Robinson Decl. ¶ 8. On June 8, 2026, Petitioner was issued a Notice to Appear, charging him with deportability under INA § 237(a)(1)(D)(i). Robinson Decl. ¶ 9.

Petitioner advances two claims in his petition, both of which fail upon even a cursory examination. First, he argues that his detention interferes with the right to participate in his criminal proceedings and his right to counsel. His second claim is that detention interferes with his constitutional right to present his application to USCIS. Petitioner cannot establish likely success on the merits or serious questions, and accordingly, this Court should dissolve the TRO.

II. 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). For mandatory preliminary relief to be granted, Petitioner "must establish that the law and facts *clearly favor* [his] position." *Garcia v. Google, Inc*, 740 (9th Cir. 2015) (emphasis in original). And "[w]here a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo pendente lite, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. International Olympic Committee*, 740 F.2d 670, 674-75 (9th Cir. 1984) (citation omitted).

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. *Winter,* 555 U.S. at 20. (citations omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "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 taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (citation omitted). "A mandatory injunction orders a responsible party to take action." *Id.* at 879 (internal quotation and citation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id*. (internal quotation and citation omitted). "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *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 and citation 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,* 786 F.3d at 740 (emphasis original).

Here, in addition to asking the Court to preserve the status quo, Petitioner seeks mandatory injunctive relief in the form of an order requiring his immediate release.

III. ARGUMENT

Petitioner makes two primary arguments. First, he claims, without elaboration, that his detention violates his right to participate in his criminal proceedings and his right to counsel. Secondarily, he argues that his detention violates his right to have USCIS adjudicate his I-751 application. Neither claim has merit.

This Court, having previously granted a TRO, should dissolve the TRO as Petitioner cannot establish a likelihood of success on the merits or serious questions as to the merits of his claim. In short, Petitioner's claims do not withstand scrutiny. Despite his claims to the contrary, he will be able to participate in his criminal hearings and he cites no authority standing for the proposition that a criminal defendant has a right to participate in therapeutic courts. Moreover, his right to counsel has not been interfered with and the record to date suggests that he has multiple attorneys, including publicly appointed counsel, acting on his behalf in a variety of jurisdictions. Additionally, as to his second argument, the record establishes that USCIS will still adjudicate his USCIS application and facilitate the biometrics required.

Petitioner has failed to show a likelihood of success on the merits. Accordingly, the TRO should be dissolved.

A. Petitioner is unlikely to succeed on the merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation and citation omitted). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241.

1. Petitioner can fully participate in his criminal proceedings and has counsel to do so.

Contrary to his claims raised in the petition, his detention will not interfere with his multiple criminal proceedings.

First, the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington facilitates communication between detainees and their legal counsel. NWIPC provides tablets to detainees to accommodate this communication (*available at* https://www.ice.gov/detain/detention-facilities/northwest-ice-processing-center-nwipc, last accessed June 15, 2026). Moreover, the NWIPC routinely accommodates remote appearances for outside court hearings, including virtual hearings for criminal cases originating out of Alaska.

Second, the Petitioner is charged with several misdemeanors—the Municipality of Anchorage cannot charge felony cases—and while his counsel claims he will not be able to meet with the Petitioner, he only is referring to in-person consultation. Dkt. 10-1 at 1. As is the case in all State proceedings with a detained defendant, arrangements with the facilities holding the defendant must be made to have attorney communications with clients. This is routine and uncomplicated. In addition, considering the nature of Petitioner's charges, his attorney can appear for him at most routine proceedings. Alaska Rules of Criminal Procedure 38(b)(2). Petitioner's counsel may also appear for any change of plea and sentencing by remote means as well. Alaska Rules of Criminal Procedure 38.2(b). While Petitioner focuses his arguments upon his supposed right to participate in Wellness Court proceedings, in both his petition and his application for a TRO, he fails to cite even one authority suggesting he has a constitutional right to participate in therapeutic court proceedings and that it is being interfered with. *See* Dkts. 1 and 5. Indeed, by his own admission, he has no plea agreement in place, which is in violation of the requirements of the court itself. *See* Dkt. 10-1; *Anchorage Wellness Court*, https://public.courts.alaska.gov/web/forms/docs/pub-112.pdf (last accessed June 22, 2026).

To succeed in his argument that he lacks access to his counsel, "evidence of actual prejudice is necessary to show interference with the right to counsel." *Zhuang v. Bondi*, 1:25-cv-00201-CMS, 2026 WL 352872 at *5 (E.D. Mo. February 9, 2026) (citing *Ervin v. Busby*, 992 F.2d 147, 150 (8th Cir. 1993)). Petitioner is unable to show that transfer is tantamount to denial of counsel. *See Lyon v. U.S. Immigration and Customs Enforcement*, 171 F.Supp.3d 961, 975 (N.D. Cal. March 18, 2016) (granting summary judgment in favor of Government on restrictive telephone communications policies of DHS detention facilities where Plaintiff did not show options were tantamount to outright denial of counsel even if effectiveness of communication is limited). Further, the undisputed record suggests that Petitioner has at least three different counsel, including publicly appointed counsel, representing him across multiple jurisdictions.

Notwithstanding the forgoing, Petitioner is eligible for a bond hearing and has declined to request one. *See* Dkt. 8. At this point, this Court should conclude that he has chosen to remain in custody pending his removal proceedings as he has not been denied bond.

2. Petitioner's I-751 application with USCIS.

Petitioner, similar to his argument concerning access to counsel and courts, claims that he has a constitutional right to pursue a I-751 with USCIS and his right is being interfered with, but he again fails to cite to a single authority. *See* Dkts. 1 and 5.

Notwithstanding his failure to provide legal authorities for his claims, the merits fail. It is routine practice for USCIS to adjudicate immigration applications for aliens who are detained and NWIPC will facilitate any biometrics request. Dkt. 14-1 at 11 n.23 (citing 8 C.F.R. 1003.47(d).

B. Petitioner has not shown 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." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). "The Ninth Circuit makes clear that a showing of immediate irreparable harm is essential for prevailing on a [preliminary injunction]." *Juarez v. Asher*, 556 F. Supp.3d 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668, 674 (9th Cir. 1988)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter,* 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22 (citation omitted).

The only immediate irreparable injury asserted in the Petition is the possibility of being detained in the Seattle/Tacoma area while pending removal, *assuming his continued refusal to request a bond hearing with the immigration court*. Petitioner appears to assert that his detention constitutes irreparable injury. But this irreparable harm argument "begs the constitutional questions presented in his petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, additional time in immigration detention pending removal does not constitute immediate irreparable injury. *See Resendiz v. Holder*, 12-cv-4850, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012) ("loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations").

Petitioner has failed to make a clear showing he will be subjected to immediate, irreparable injury without the request injunctive relief.

C. The balance of equities and public interests favors the Government.

It is well settled that the public interest in enforcement of United States' immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders). This public interest outweighs Petitioner's private interest here.

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IV. CONCLUSION

Petitioner has failed to establish a likelihood of success on the merits of his claims or even serious questions going to the merits. He has failed to even cite authorities for the legal propositions or rights that he declares in his Petition. Petitioner has the burden of persuasion at the TRO stage and it is a burden he has failed to even attempt to carry. This Court should decline to act as the immigration court and should dissolve the TRO.

RESPECTFULLY SUBMITTED this June 22, 2026, in Anchorage, Alaska.

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CERTIFICATE OF SERVICE
I hereby certify that on June 22, 2026,
a true and correct copy of the foregoing
was served electronically on the following:

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