

1 **WO**

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

7

8

9

Fathy Mohamed Abdusalam,

)

No. CV 12-00362-PHX-FJM

10

Petitioner,

)

**ORDER**

11

vs.

)

12

Katrina Kane, et al.,

)

13

Respondents.

)

14

15

16

The court has before it petitioner's motion for preliminary injunction (doc. 3), respondents' response (doc. 14), and petitioner's reply (doc. 15). Petitioner seeks to enjoin further detention without a bond hearing while his petition for writ of habeas corpus is pending.

20

To obtain a preliminary injunction, plaintiff must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm absent preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 374 (2008). Petitioner "concedes that he seeks a mandatory injunction, and that his request is subject to a higher degree of scrutiny" (doc. 3). Mandatory preliminary relief "should not be issued unless the facts and law clearly favor the moving party." Anderson v. United States, 612 F.2d 1112, 1114 (9th Cir. 1979).

28

This case presents legal issues which have not been squarely addressed by the Court

1 of Appeals for the Ninth Circuit. Petitioner has not demonstrated that the law and facts  
2 clearly favor his position.

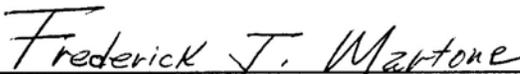
3 There is no showing that irreparable harm is likely. Petitioner's petition for writ of  
4 habeas corpus and the Report and Recommendation of the United States Magistrate Judge  
5 are now fully briefed. A ruling on the petition will follow shortly. If petitioner's petition is  
6 granted, the court would order respondents to hold a bond hearing. If petitioner's petition is  
7 denied, he would not be entitled to a bond hearing and thus would suffer no harm. Petitioner  
8 has not met the standard of establishing a likelihood of irreparable harm.

9 Petitioner does not show that the balance of equities tips in his favor. His argument  
10 focuses on his mental illness, contending that his mental health will deteriorate without  
11 treatment. He does not, however, argue that respondents have refused to provide treatment.  
12 The public interest could be harmed by releasing petitioner. He failed to attend an interview  
13 with USCIS and was convicted of assault by means likely to cause great bodily injury. The  
14 detention of criminal aliens authorized by 8 U.S.C § 1226(c) advances the goal of preventing  
15 removable aliens from absconding or committing additional crimes before they are removed.

16 Plaintiff fails to meet the standard of Winter and the heightened standard necessary  
17 for a mandatory preliminary injunction.

18 **IT IS ORDERED DENYING** petitioner's motion for preliminary injunction (doc.  
19 3).

20 DATED this 13<sup>th</sup> day of September, 2012.

21  
22   
23 

---

 Frederick J. Martone  
24 United States District Judge  
25  
26  
27  
28