

District Judge Jamal N. Whitehead

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NUR SHEIKH-ELMI,

Petitioner,

v.

NORTHWEST ICE PROCESSING CENTER,
et al.,

Respondents.

Case No. 2:25-cv-00850-JNW

FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S
EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION

Noted for Consideration:
May 21, 2025

Federal Respondents, by and through their attorneys, Teal Luthy Miller, Acting United States Attorney for the Western District of Washington, and Michelle R. Lambert, Assistant United States Attorney, submit this opposition to Plaintiff's motion for a preliminary injunction and stay of removal. Dkt. No. 4 (the "Motion" or "PI").

I. INTRODUCTION

This Court should deny Petitioner Nur Sheikh-Elmi's request for a preliminary injunction and dismiss the habeas petition in its entirety. This habeas litigation was brought on Sheikh-Elmi's behalf by his mother, Halima Warsame, as his next friend. The PI motion seeks a stay of Sheikh-Elmi's removal, but there is no legal basis to grant this request.

1 This Court initially enjoined U.S. Immigration and Customs Enforcement (“ICE”) from
 2 removing Sheikh-Elmi from the United States on May 9, 2025, (Dkt. No. 11, TRO, as amended
 3 by Dkt. No. 16, Order on Respondent’s Motion for Reconsideration). This Court found “serious
 4 questions going to the merits of whether he is removable during the pendency of his [temporary
 5 protected status (“TPS”)] appeal.” TRO, at 7. This issue is no longer present.

6 On May 15, 2025, USCIS affirmed the original denial of Sheikh-Elmi’s TPS application
 7 and dismissed his TPS appeal. Declaration of Susan Dibbins (“Dibbins Decl.”), ¶ 6. As a result,
 8 Sheikh-Elmi’s claim concerning the legality of his removal with a pending TPS appeal is moot
 9 and cannot support his request for a stay of removal. Additionally, ICE has scheduled Sheikh-
 10 Elmi’s removal to Somalia, pending the expiration of the TRO, which will end Sheikh-Elmi’s
 11 detention. Declaration of Michelle Lambert (“Lambert Decl.”), Ex. H; Declaration of Enrique
 12 Rodriguez (“Rodriguez Decl.”), ¶ 3. This negates the Petition’s claim that the Government
 13 intends to send Sheikh-Elmi to any third-party country. The remainder of the Petition’s claims
 14 seek relief outside of this Court’s jurisdiction. Thus, the Petition and the PI motion fail to
 15 provide a valid legal basis for staying his removal.

16 Furthermore, this habeas petition violates the abuse of the writ doctrine. It is duplicative
 17 of an already-pending habeas case in this District concerning the same subject matter – his
 18 prolonged immigration detention, including issues concerning his removal. *Nur Sheikh Elmi v.*
 19 *Bondi*, 2:24-cv-1048-TMC-TLF (“*Elmi I*”). Sheikh-Elmi, through counsel, has vigorously
 20 litigated *Elmi I* since its commencement in July of 2024, and either has or could have raised the
 21 very issues before this Court here in *Elmi I*. Therefore, dismissal of this case would not result in
 22 a fundamental miscarriage of justice. In fact, it would avoid potentially conflicting decisions
 23 issued on the same issues.

24 Accordingly, this Court should deny the Motion.

II. BACKGROUND

A. Petitioner Nur Sheikh-Elmi

Sheikh-Elmi is a native and citizen of Somalia. Lambert Decl., Ex. A (Form I-213, Record of Deportable/Inadmissible Alien). He entered the United States without inspection on or around August 22, 2022. *Id.*, at R148. He was taken into custody at that time and processed for expedited removal pursuant to 8 U.S.C. § 1225(b). *Id.*; Lambert Decl., Ex. B (Form I-860). He has remained in custody since this time. Pet., ECF p. 5.

Shiekh-Elmi claimed fear of returning to Somalia, which triggered the credible fear process and led to an interview by a U.S. Citizenship and Immigration Services (“USCIS”) asylum officer. 8 U.S.C. §§ 1225(b)(1)(A)(ii) & (b)(1)(B). The asylum officer found that Sheikh-Elmi had demonstrated a credible fear of persecution or torture and issued a Notice to Appear (“NTA”) for violating 8 U.S.C. §§ 1227(a)(7)(A)(i)(I) and (a)(6)(A)(i). Lambert Decl., Ex. C (Notice to Appear).

On March 21, 2023, an Immigration Judge (“IJ”) denied Sheikh-Elmi’s applications for relief, including asylum, withholding of removal, and withholding of removal under the Convention Against Torture (“CAT”), and ordered that he be removed to Somalia. Lambert Decl., Ex. D (Order of the IJ).

Shortly thereafter, Sheikh-Elmi filed a TPS application with USCIS for protection from removal to Somalia. Dibbins Decl., ¶ 3. Congress has authorized the Secretary of Homeland Security to designate foreign countries for TPS under certain conditions. 8 U.S.C. § 1254a(b)(1). Somalia is a TPS-designated country. Designation of Nationals of Somalia for Temporary Protected Status, 56 Fed. Reg. 46,804 (Sept. 16, 1991); Notice of Temporary Protected Status (TPS) Extension and Redesignation, 89 Fed. Reg. 59,135 (July 22, 2024) (extending TPS eligibility for Somali nationals through March 17, 2026). Noncitizens found eligible for the TPS

1 program are entitled to certain benefits, including temporary protection from removal to the TPS-
2 designated country and authorization to engage in employment in the United States. *See* 8
3 U.S.C. § 1254a(a)(1).

4 On December 12, 2023, the Board of Immigration Appeals (“BIA”) dismissed Sheikh-
5 Elmi’s subsequent administrative appeal of the IJ’s order denying his application for asylum,
6 withholding of removal, and CAT protection. *Id.*, ¶ 10; Lambert Decl., Ex. E (BIA Decision)
7 (redacted).¹ Because Sheikh-Elmi did not continue to challenge the order, his removal order
8 became administratively final on that date. 8 U.S.C. § 1231(a)(1)(B)(i).

9 **B. *Nur Sheikh Elmi v. Bondi*, 2:24-cv-1048-TMC-TLF (“*Elmi I*”)**

10 On July 15, 2024, Sheikh-Elmi filed a *pro se* habeas petition challenging his post-order
11 immigration detention at the Northwest ICE Processing Center (“NWIPC”) as unconstitutional
12 and unlawful while he awaits removal from the United States. Dkt. No. 1, Pet. In the petition,
13 Sheikh-Elmi alleged that his detention had become unconstitutionally indefinite because Somalia
14 would not accept him. Pet., ¶ 17(D). The court granted Sheikh-Elmi’s motion to appoint
15 counsel (Dkt. No. 2) and appointed the Federal Public Defender to represent him in the
16 proceedings. Dkt. No. 5.

17 On August 30, 2024, Federal Respondents responded to the court’s order for a return and
18 status report and moved to dismiss the petition. Dkt. No. 7. The return explained that ICE had
19 learned that Sheikh-Elmi had an active Kenyan passport under a different name. *Id.*, at 5.
20 Because Somalia was not issuing travel documents at that time, ICE decided to pursue his
21 removal to Kenya. *Id.* ICE then notified Sheikh-Elmi in writing that it was seeking to remove
22 him to Kenya. Lambert Decl., Ex. F (Letter, dated Aug. 19, 2024). While Sheikh-Elmi initially
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24 ¹ The BIA’s discussion of the facts forming the basis for Sheikh-Elmi’s requests for relief from removal have been redacted. *See* 8 C.F.R. § 208.6.

1 did not wish to seek deferral of removal when notified, after Federal Respondents filed the
2 return, he claimed that he did not understand the notice. Dkt. No. 10, at 2-3. When ICE reissued
3 the notification, he refused to sign it, but still did not claim fear of removal to Kenya. *Id.*

4 Through counsel, Sheikh-Elmi responded to the return and disputed that Kenya would
5 accept him based on his fraudulently obtained passport. Dkt. No. 10. He argued that there was
6 good reason to believe that he would not be removed in the reasonably foreseeable future. *Id.*, at
7 5-6.

8 In their reply, Federal Respondents informed the court that the Kenyan government had
9 issued a travel document and would accept Sheikh-Elmi. Dkt. No. 11, at 1. Federal
10 Respondents argued that Sheikh-Elmi's removal was foreseeable because he would either be
11 removed to Kenya or released from custody once his pending TPS application was adjudicated.
12 *Id.*, at 1-2. The day that Federal Respondents filed their reply, Sheikh-Elmi informed ICE that
13 he claimed fear of removal to Kenya. Dkt. No. 14. Accordingly, Federal Respondents notified
14 the court of this development. Dkt. No. 13.

15 In response, the court ordered the parties to submit additional briefing regarding (1) the
16 status of Sheikh-Elmi's claims alleging fear of removal to Kenya, and the impact on his removal
17 proceedings, custody status, and the habeas proceeding; and (2) the status of his TPS application.
18 Dkt. No. 15. In response, Federal Respondents submitted briefing explaining that the
19 Department of Homeland Security ("DHS") and Sheikh-Elmi had filed a joint motion to reopen
20 his removal proceedings with the BIA to allow for the adjudication of Shiekh-Elmi's asylum
21 application regarding removal to Kenya. Dkt. No. 16, at 1-2. The court was further updated on
22 the status of the pending TPS application. *Id.*, at 2. Sheikh-Elmi, through counsel, responded to
23 the order by informing the court that it expected the Kenyan travel document to be rescinded
24 because it was issued with incomplete information. Dkt. No. 18. He further submitted an email

1 (also submitted as Exhibit C to the Petition in this litigation) from a purported Kenyan attorney
2 along with a document demonstrating that the Kenyan government is undertaking an
3 investigation to resolve the travel document issue. *Id.*, Ex. 1.

4 On December 4, 2024, Federal Respondents informed the district court that the BIA
5 granted the request to reopen and remand Sheikh-Elmi's removal proceedings. Dkt. No. 19. As
6 a result, the district court ordered Sheikh-Elmi's counsel to respond to Federal Respondents'
7 assertion that the reopening of Sheikh-Elmi's removal proceedings shifted the detention
8 authority at issue from 8 U.S.C. § 1231 to 8 U.S.C. § 1225(b), mooted out his habeas claims.
9 Dkt. No. 20. Prior to Sheikh-Elmi's response, DHS filed a motion to reconsider with the BIA,
10 requesting that the BIA reissue the remand order to clarify that the remand is limited to
11 considering Sheikh-Elmi's application for relief from removal to Kenya. Dkt. No. 25, at 1-2.
12 Thereafter, Sheikh-Elmi updated the court and provided documents concerning Sheikh-Elmi's
13 Kenyan passport under a different name. Dkt. No. 23. This triggered another order for
14 supplemental briefing concerning the status of Sheikh-Elmi's removal proceedings and
15 anticipated removal. Dkt. No. 24.

16 In January 2025, USCIS denied Sheikh-Elmi's TPS application as a matter of discretion.
17 Dibbins Decl., ¶ 5. He administratively appealed the denial with USCIS's Administrative
18 Appeals Office ("AAO"). *Id.*

19 The next month, Federal Respondents submitted supplemental briefing informing the
20 court that Somalia had issued a travel document for Sheikh-Elmi's removal on February 3, 2025.
21 Dkt. No. 25, at 2. As a result, DHS had filed a motion with the BIA to vacate the December
22 remand order because it was no longer seeking Sheikh-Elmi's removal to Kenya. *Id.* Federal
23 Respondents further explained that, because Sheikh-Elmi's TPS application had been denied, he
24 would be removed to Somalia once his removal order again becomes administratively final. *Id.*

1 Sheikh-Elmi, through counsel, filed a status report explaining that the Somalian travel
2 document had expired and alleging that Somalia would not issue him a new travel document due
3 to his mental health status. Dkt. No. 27, at 1. Sheikh-Elmi's counsel further averred that his
4 client could not be deported while his TPS application was pending administrative appeal. *Id.*, at
5 2. Counsel argued that Sheikh-Elmi should "be released on conditions because the potential
6 availability of [TPS] meant that his removal to Somalia was not substantially likely to occur in
7 the reasonably foreseeable future." *Id.* (citing *Salad v. Dep't of Corr.*, 3:25-cv-29, 2025 WL
8 732305 (D. Alaska Mar. 7, 2025)).

9 In response, the court ordered Federal Respondents to submit additional briefing on
10 various issues, including "whether petitioner is subject to removal while the [TPS] appeal is
11 pending" and Sheikh-Elmi's mental health status and its impact on whether Somalia will issue a
12 travel document. Dkt. No. 28, at 3.

13 On March 18, 2025, the BIA reinstated Sheikh-Elmi's removal order "as the final
14 administrative decision in this case." Lambert Decl., Ex. G (BIA Order). The BIA declined to
15 address Sheikh-Elmi's request concerning future fact-finding about events in Kenya. *Id.*, at 2.
16 Additionally, the BIA denied Sheikh-Elmi's request to review USCIS's denial of his TPS
17 application. *Id.* The order explained that because Sheikh-Elmi is subject to a final order of
18 removal that was not initiated because of the TPS denial, review of his TPS denial would
19 properly be before "the USCIS/AAO, as noted in the USCIS decision." *Id.* (citing 8 C.F.R.
20 § 244.10(c)).

21 On April 4, 2025, Federal Respondents informed the court that Sheikh-Elmi again was
22 subject to a final order of removal and that ICE had requested a new travel document from the
23 Somali Embassy. Dkt. No. 29, at 1-2. The briefing further disclosed NWIPC's health provider's
24 mental health diagnosis for Sheikh-Elmi but explained that ICE did not anticipate that his mental

1 health status would affect its ability to obtain a travel document and remove him to Somalia. *Id.*,
 2 at 3. Finally, Federal Respondents argued that Sheikh-Elmi remains subject to removal pending
 3 his administrative appeal of the TPS application denial. *Id.*, at 3 (quoting *Osman v. Schmidt*, No.
 4 25-cv-286, 2025 WL 870048, at *3 (E.D. Wis. Mar. 20, 2025)).

5 Within the week, Sheikh-Elmi's counsel filed an emergency motion seeking an order
 6 requiring ICE to allow a mental health expert access to Sheikh-Elmi for an evaluation. Dkt. No.
 7 31. This motion was withdrawn as ICE voluntarily provided the mental health expert with the
 8 requested access. Dkt. No. 34. Sheikh-Elmi subsequently filed a written report by the expert
 9 with the court. Dkt. No. 36.

10 On April 30, 2025, twenty days after Sheikh-Elmi filed the expert report with the court,
 11 Somalia issued a second travel document for Sheikh-Elmi's removal to Somalia. Dkt. No. 40,
 12 ¶ 4. The travel document expires on May 31, 2025. *Id.*

13 *Elmi I* remains pending.

14 **C. The instant habeas petition (“*Elmi II*”)**

15 On May 7, 2025, Halima Magan Warsame, Shiekh-Elmi's mother, filed a pro se habeas
 16 petition on his behalf. Dkt. No. 1. Despite the numerous issues before the court as described
 17 above, the petition describes *Elmi I* as challenging “only [Sheikh-Elmi's] prolonged detention
 18 under *Zadvydas v. Davis*.” *Id.*, ¶ 16. The *Elmi II* Petition alleges that Sheikh-Emi is being
 19 unlawfully detained because: (1) his country of removal is unknown; (2) his TPS administrative
 20 appeal is pending; (3) removal to Kenya would be unlawful and a violate due process; (4)
 21 humanitarian concerns for his removal to Somalia; and (5) prolonged and indefinite detention as
 22 defined in *Zadvydas*. See Pet., ¶¶ 17-18. Warsame seeks an order staying Sheikh-Elmi's
 23 removal pending this litigation and/or the TPS appeal determination while also asking this Court
 24 to declare his prolonged detention unconstitutional and unlawful. Pet., ECF p. 16-18.

1 In conjunction with the Petition, Warsame filed a Motion for a Temporary Restraining
2 Order (“TRO”) (Dkt. No. 3) and an Emergency Motion for a PI (Dkt. No. 4). The TRO motion
3 sought an order enjoining Shiekh-Elmi’s removal and to be informed of the country of removal.
4 Dkt. No. 3. The PI Motion requests an order enjoining Sheikh-Elmi’s removal without
5 disclosure of the country of removal and “verifying the validity of the travel document being
6 used.” Dkt. No. 4, at 1.

7 The next day, Federal Respondents filed a notice of intent to oppose the TRO motion.
8 Dkt. No. 9. In the notice, Federal Respondents informed this Court about *Elmi I. Id.* The notice
9 further explained that Sheikh-Elmi’s counsel in *Elmi I* had been informed that DHS intends to
10 remove his client to Somalia and has a valid travel document to do so. *Id.* Federal Respondents
11 did not submit further briefing.²

12 On May 9, 2025, this Court issued a TRO enjoining ICE from removing or deporting
13 Sheikh-Elmi from the United States or transferring him to another facility. Dkt. No. 11, at 10.
14 In its decision, this Court made a preliminary finding that Warsame qualified for next friend
15 standing. *Id.*, at 5-7. Next, the Court found that the Petition raises serious questions as to
16 whether Sheikh-Elmi is removable during the pendency of his TPS appeal. *See id.*, at 7-8. The
17 TRO also states that Sheikh-Elmi would be irreparably harmed if removed and that a stay of
18 removal would hold the status quo. *Id.*, at 9-10. The order states that the TRO expires 14 days

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21 ² On May 8, 2025, the clerk’s office notified Warsame and Sheikh-Elmi that the incorrect in forma pauperis (“IFP”) application had been submitted. Dkt. Nos. 6 & 8. They were further notified that the deficiency must be corrected by June 9, 2025, or the case may be dismissed. *Id.* Undersigned counsel did not believe that a response to the TRO motion was required at that time because of the IFP deficiency. *See Saecho v. ICE Field Off. Dir.*, 2:24-cv-1329-RSM-MLP, Dkt. No. 5, Rep’t & Rec. (Oct. 18, 2024) (stating that the Government’s “motion was premature and unnecessary” because the habeas petitioner had not filed a corrected IFP application “and, thus, his federal habeas petition was never technically filed and is not now properly before the Court”). Federal Respondents filed a notice of intent to oppose the TRO motion in anticipation of the IFP deficiency being corrected and to provide this Court with preliminary information. Undersigned counsel regrets the misunderstanding.

1 from entry. *Id.*, at 10. It further requires Federal Respondents to respond to the PI motion by
2 May 16, 2025, and allows Sheikh-Elmi to file a reply by May 21, 2025. *Id.*

3 On May 11, 2025, Federal Respondents moved this Court to reconsider the issuance of
4 the TRO. Dkt. No. 12. Specifically, the motion argued that (1) Warsame could not proceed *pro*
5 *se* while bringing a claim on behalf of her son; and (2) Warsame did not meet the requirements
6 for next friend standing.

7 On May 13, 2025, this Court granted Federal Respondent's motion for reconsideration in
8 part and ordered Warsame to obtain counsel to proceed with this case. Dkt. No. 16. Warsame
9 has until June 3, 2025, to obtain counsel. *Id.*, at 5. The Court ordered that the TRO remain in
10 effect until May 20, 2025. *Id.*

11 III. LEGAL STANDARD

12 The standard for issuing a temporary restraining order is "substantially identical" to the
13 standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
14 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is
15 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*
16 *showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
17 (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555
18 U.S. 7, 22 (2008).

19 "A plaintiff seeking a preliminary injunction must show that: (1) [he] is likely to succeed
20 on the merits, (2) [he] is likely to suffer irreparable harm in the absence of preliminary relief, (3)
21 the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Martin v.*
22 *International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984) (internal quotation
23 omitted). Alternatively, a plaintiff can show that there are "serious questions going to the merits
24 and the balance of hardships tips sharply towards [plaintiff], as long as the second and third

1 *Winter* factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir.
2 2017) (internal quotation omitted).

3 IV. ARGUMENT

4 A. The abuse of the writ doctrine bars this Court’s consideration of *Elmi II*.

5 The instant Petition should be dismissed under the abuse of the writ doctrine because it is
6 an improperly filed successive petition. The doctrine “generally forbids the reconsideration of
7 claims that were or could have been raised in a prior habeas petition.” *Alaimalo v. United States*,
8 645 F.3d 1042, 1049 (9th Cir. 2011) (quotations and citations omitted). Sheikh-Elmi, through
9 counsel, has previously raised the claims and/or facts at issue here in *Elmi I*. Furthermore,
10 because *Elmi I* is still pending, Sheikh-Elmi can seek to raise new issues in that case. *Calderon*
11 *v. U.S. Dist. Ct.*, 163 F.3d 530, 538 (9th Cir. 1998) (en banc), *overruled in part on other grounds*
12 *by Woodford v. Garceau*, 538 U.S. 202 (2003).

13 The application of the abuse of the writ doctrine is especially necessary here. If both
14 cases were to move forward, two courts would be considering the same issues and facts. To
15 avoid appearing duplicative, the *Elmi II* petition describes *Elmi I* as a “narrowly focused
16 *Zadvydas*-based habeas petition.” Pet., at ECF p. 13. But this ignores the scope of the facts and
17 arguments presented in *Elmi I*. For instance, Sheikh-Elmi challenged ICE’s ability to remove him
18 to Kenya in *Elmi I*. See *Elmi I*, Dkt. Nos. 15, 16, 18, 23, 24. Also, the issue of whether Sheikh-
19 Elmi is subject to removal while he appeals his TPS application denial is before the *Elmi I* court.
20 See *Elmi I*, Dkt. Nos. 27, 28, 29. Likewise, Sheikh-Elmi’s counsel has raised the issue of his
21 client’s mental health condition and filed an expert report in *Elmi I*.³ See *Elmi I*, Dkt. Nos. 27,
22 29, 31, 36. In total, both cases ask separate courts to determine whether Sheikh-Elmi’s

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24 ³ Warsame has not provided Federal Respondents with the sealed expert report submitted in this litigation. Based on the description, it is believed to be the same document filed in *Elmi I*.

1 continued detention is constitutional and lawful, including whether his removal will likely be
2 executed in the reasonably foreseeable future. Sheikh-Elmi should not be allowed to continue to
3 raise the same claims in two different courts based on the same set of facts.

4 Furthermore, Sheikh-Elmi does not qualify for the exception to the abuse of the writ
5 doctrine. He cannot demonstrate cause for bringing *Elmi II* while *Elmi I* is still pending. But
6 even if *Elmi I* were not still pending, the facts he bases his *Elmi II* claims on were raised in *Elmi*
7 *I*, or could have been raised in *Elmi I*. He has received – and continues to have – a “full and fair
8 opportunity to raise the claim in the prior [petition].” *Brown v. Muniz*, 889 F.3d 661, 674 (9th
9 Cir. 2018). “[A] petitioner had no fair opportunity to raise the claim in the prior application if
10 the claim was not yet ripe at the time of the first petition, or where the alleged violation occurred
11 only after the denial of the first petition.” *Id.* (internal quotation and citation omitted). That is
12 not the case here.

13 *Elmi II* was filed with *Elmi I* still pending. Hence, there would be no “fundamental
14 miscarriage of justice” resulting from this Court’s dismissal of *Elmi II*. *Alaimalo*, 645 F.3d at
15 1049. Even if Warsame does not agree with how *Elmi I* is being litigated, she cannot raise a
16 claim in *Elmi II* that could have been raised in *Elmi I* “regardless of whether that failure to raise
17 it earlier stemmed from a deliberate choice.” *McCleskey v. Zant*, 499 U.S. 467, 489 (1991).

18 Accordingly, this Court should dismiss this case as it violates the abuse of the writ
19 doctrine.

20 **B. Warsame does not fulfill the requirements for Next Friend Standing.**

21 Warsame does not qualify to bring this habeas litigation as a “Next Friend” to Sheikh-
22 Elmi. A third party may bring a habeas petition on behalf of a “next friend.” *See* 28 U.S.C.
23 § 2242. “Next friends” must show (1) that the person seeking relief is unable to litigate his or
24 her own cause due to mental incapacity, lack of access to court, or some other disability; and (2)

1 that the person claiming standing has a significant relationship with the person seeking relief.
2 *Coalition of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d 1153, 1159-60 (9th Cir. 2002).
3 Warsame does not meet the first requirement.

4 Warsame asserts that Sheikh-Elmi “is unable to understand or participate meaningfully in
5 legal proceedings.” Pet., ¶ 3. But this ignores the reality that Sheikh-Elmi is actively litigating
6 *Elmi I*, where he is represented by counsel. In *Elmi I*, Sheikh-Elmi continues to challenge the
7 lawfulness of his prolonged detention. There is recent evidence that Sheikh-Elmi has the
8 presence of mind to contact his attorney with questions about his removal. Dkt. No. 13-1, Email
9 from Gregory Murphy, dated May 6, 2025 (highlighted). It can be reasonably inferred that
10 Sheikh-Elmi has been participating meaningfully in *Elmi I* and could raise (or has raised) the
11 issues brought here. Therefore, Warsame is not qualified to bring claims on behalf of her son as
12 a Next Friend and has no standing to do so.

13 **C. This Court does not have jurisdiction to enjoin the execution of Sheikh-Elmi’s**
14 **removal.**

15 Congress has spoken clearly, emphatically, and repeatedly, providing that “no court” has
16 jurisdiction over “any cause or claim” arising from the execution of removal orders,
17 “notwithstanding any other provision of law,” whether “statutory or nonstatutory,” including
18 habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). As a result, this Court lacks
19 jurisdiction to review ICE’s decision to execute Sheikh-Elmi’s order of removal.

20 In the exercise of its constitutional power to define federal court jurisdiction, in 1996,
21 Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”),
22 which repealed the existing scheme for judicial review of final orders of deportation and replaced
23 it with a more restrictive scheme. See *Reno v. American-Arab Anti-Discrimination Committee*
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1 (“*AADC*”), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress
2 provided in the newly-enacted Section 1252(g) that:

3 Except as provided in this section and notwithstanding any other provision of law,
4 no court shall have jurisdiction to hear any cause or claim by or on behalf of any
5 alien arising from the decision or action by the Attorney General to commence
proceedings, adjudicate cases, or execute removal orders against any alien under
this Act.

6 8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to
7 clarify that the statute’s proscription against jurisdiction does in fact apply to habeas and
8 mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11
9 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now
10 provides that:

11 Except as provided in this section and notwithstanding any other provision of law,
12 (*statutory or nonstatutory*), including section 2241 of Title 28, or any other
13 habeas corpus provision, and *sections 1361 and 1651 of such title*, no court shall
14 have jurisdiction to hear 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 against any alien under this chapter.

15 8 U.S.C. § 1252(g) (2017) (emphasis added).

16 In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three
17 discrete actions that DHS may take: the “‘decision or action’ to ‘*commence* proceedings,
18 *adjudicate* cases, or *execute* removal orders.’” 525 U.S. at 482 (original emphasis). With a valid
19 order of removal, any request for this Court to enjoin Sheikh-Elmi’s removal falls directly within
20 one of the discrete actions precluded from judicial review.

21 The concerns raised in the TRO and the PI motion have either been resolved or lay
22 beyond the jurisdiction of this Court. In the TRO, this Court found “serious questions going to
23 the merits of whether [Sheikh-Elmi] is removable during the pendency of his TPS appeal.”
24 TRO, at 7. However, USCIS has since dismissed Sheikh-Elmi’s TPS appeal. Dibbons Decl.,

¶ 6. The AAO affirmed the original decision and upheld the denial of TPS in the exercise of discretion. *Id.* The PI motion specifically requests an injunction preventing Sheikh-Elmi's removal until: (1) the intended country of removal is disclosed in writing; (2) a valid travel document is presented; and (3) this Court reviews the legality of the removal to that destination. PI Mot., at 2. The first two requests have been satisfied as part of this filing. Lambert Decl., ¶ H (Travel Document); Rodriguez Decl., ¶ 3 (travel plans to Somalia scheduled). And this Court does not have jurisdiction to review a challenge to the designation of Somalia in the removal order or the denial of Sheikh-Elmi's requests for relief from removal during his removal proceedings. 8 U.S.C. § 1252(a)(5).

Accordingly, this Court lacks jurisdiction to enjoin DHS's execution of Sheikh-Elmi's removal order. *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022). ("No matter how Matias frames it, his challenge is to the Attorney General's exercise of his discretion to execute Matias's removal order, which we have no jurisdiction to review.").

D. This Court lacks jurisdiction to review Sheikh-Elmi's final order of removal.

The Petition asks this Court to stay Sheikh-Elmi's removal because of the conditions in Somalia and his "vulnerabilities." Pet., at ECF p. 10-11. However, this request is in clear contradiction to the IIRIRA. "The IIRIRA substantially limited the availability of judicial review and streamlined all challenges to a removal order into a single proceeding: the petition for review." *Nken v. Holder*, 556 U.S. 418, 424 (2009) (citing 8 U.S.C. § 1252(a)(2) (barring review of certain removal orders and exercises of executive discretion); Section 1252(b)(3)(C) (establishing strict filing and briefing deadlines for review proceedings); Section 1252(b)(9) (consolidating challenges into petition for review). "A petition for review filed *with an appropriate court of appeals* in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5) (emphasis added).

1 Accordingly, this Court does not have jurisdiction to consider Sheikh-Elmi's request to
2 review the removal order.

3 **E. Nur Sheikh-Elmi is unlikely to succeed on the merits.**

4 Sheikh-Elmi is unlikely to succeed on his habeas claims. First, Sheikh-Elmi does not
5 allege that he is not subject to a final order of removal. ICE intends to remove Sheikh-Elmi to
6 Somalia, as designated in the removal order. ICE has a valid travel document to execute his
7 removal to Somalia. Lambert Decl., Ex. H. If ICE were to ignore the country of designation and
8 seek his removal to a third country, ICE would notify Sheikh-Elmi prior to removal to Kenya or
9 a third country, as it previously notified him. Therefore, his claims concerning the lawfulness of
10 his removal to Kenya or a third country are speculative at best, and not ripe for review. Pet., at
11 ECF p. 4, 8-9 (speculating that ICE may be "concealing its intent" to pursue Sheikh-Elmi's
12 removal to Kenya).

13 Second, Sheikh-Elmi's argument that he may not be removed pending his TPS appeal is
14 now moot. Pet., at ECF p. 3. USCIS has dismissed the appeal, and it is no longer pending.
15 Dibbins Decl., ¶ 6. Sheikh-Elmi has exhausted his administrative appellate rights in this case
16 and the decision is final. *Id.*

17 Third, Sheikh-Elmi's assertion that his removal to Somalia would be unlawful without
18 additional opportunity to seek relief from removal is without merit. Pet., at ECF p. 5-6. As
19 explained above, this Court does not have jurisdiction to review a challenge to the removal order.
20 But even on a practical level, Sheikh-Elmi has already taken advantage of his ability to seek
21 relief from removal to Somalia before the IJ, the BIA, USCIS and the AAO. The main
22 arguments in the Petition rehash claims already presented in those forums. To the extent that he
23 may have new bases for relief from removal, this Court is not the appropriate forum.

1 Lastly, Sheikh-Elmi is not entitled to release from detention under *Zadvydas*. Pet., at
2 ECF p. 11. In *Zadvydas*, the Supreme Court found that post-order detention could be potentially
3 indefinite as authorized under the open-ended terms of Section 1231(a)(6). Finding the
4 possibility of indefinite detention troublesome, the Supreme Court clarified that there is a point
5 at which Congress's interest in detaining a noncitizen to facilitate his removal may eventually
6 give way to the noncitizen's liberty interest. This shift occurs when detention becomes
7 potentially indefinite. *Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of
8 an [noncitizen] would raise a serious constitutional problem.").

9 Sheikh-Elmi's detention has not become "indefinite" or unconstitutional. He has not met
10 his burden of providing a good reason to believe that there is no significant likelihood of his
11 removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. The only impediment
12 to his removal is this Court's stay of removal that he requested. ICE has scheduled his travel to
13 Somalia pending the expiration of this Court's order staying removal. Furthermore, he alleges
14 that his prolonged detention has affected his mental health. However, his removal will end the
15 very detention that he claims is impacting his mental health.

16 Accordingly, Sheikh-Elmi's continued detention pending his removal has not become
17 indefinite. His removal will be executed when this Court allows ICE to do so.

18 **F. Sheikh-Elmi has not shown irreparable harm.**

19 Shiekh-Elmi has not demonstrated that he will suffer irreparable injury absent the
20 injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury."
21 *Caribbean Marine Services Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum*
22 *Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing
23 a "possibility" of irreparable harm is insufficient. See *Winter*, 555 U.S. at 22. "Issuing a
24 preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the

1 Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only
2 be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at
3 22.

4 In the TRO, the Court found irreparable harm due to Sheikh-Elmi's mental health status,
5 family separation, and additional hurdles in his TPS process if removed. TRO, at 9. Federal
6 Respondents respectfully disagree with this assessment. First, Sheikh-Elmi's TPS appeal has
7 been dismissed. Dibbins Decl., ¶ 6. Second, Sheikh-Elmi asserts that his mental health decline
8 is a result of his prolonged detention. But his removal will end his detention and a preliminary
9 injunction extending his detention would only exacerbate his mental health issues. Lastly,
10 Sheikh-Elmi has not lived with his family in the United States. He has been detained since his
11 unlawful entry in 2022. Any assertion that he would suffer irreparable harm based on family
12 separation after his removal ignores this reality.

13 Accordingly, Sheikh-Elmi has not made a clear showing of immediate irreparable harm
14 absent a preliminary injunction.

15 **G. The balance of the equities and public interests favor the Government.**

16 Finally, the balance of equities and the public interest weigh decisively against Sheikh-
17 Elmi's request for preliminary injunctive relief. Unlike some other requests for preliminary
18 injunctive relief where the constitutionality of a statute or regulation may be in question, here
19 Sheikh-Elmi asks this Court to enjoin the enforcement of an unquestionably lawful and final
20 removal order. Furthermore, numerous entities have already reviewed and denied his
21 applications for relief from removal to Somalia. These unsuccessful applications have been a
22 significant cause of the delay in his removal thus far.

23 It is well settled that the public interest in enforcement of United States' immigration
24 laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976);

1 *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme
2 Court has recognized that the public interest in enforcement of the immigration laws is
3 significant.") (citing cases); *Nken*, 556 U.S. at 435 ("There is always a public interest in prompt
4 execution of removal orders."). Where a noncitizen has received full and fair consideration of
5 his claims for relief from removal, like Sheikh-Elmi has, the public interest in enforcement of a
6 lawful removal order is even greater. Finally, a preliminary injunction would require ICE to
7 obtain a third Somalian travel document, which would unnecessarily extend Sheikh-Elmi's
8 detention. This is not in Sheikh-Elmi's interest or the public's interest.

9 **V. CONCLUSION**

10 For these reasons, Sheikh-Elmi has not satisfied the high burden of establishing
11 entitlement to preliminary injunctive relief, and Federal Respondents request this Court deny
12 Plaintiff's Motion.

13 DATED this 16th day of May, 2025.

14 Respectfully submitted,

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*I certify that this memorandum contains 5,788
words, in compliance with the Local Civil Rules.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on this date, I electronically filed the foregoing, Declaration of Deportation Officer Enrique Rodriguez, Declaration of Susan Dibbins and Declaration of Michelle R. Lambert with the supporting Exhibits A through H with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on this date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

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DATED this 16th day of May, 2025.

s/ Stephanie Huerta-Ramirez

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