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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARTEM VASKANYAN,

Petitioner,

v.

JAMES JANECKA, Warden, Adelanto ICE Processing Center, THOMAS GILES, Los Angeles ICE Field Office Director, TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI; Attorney General of the United States,

Respondents.

No. 5:25-cv-01475-MRA-AS

RESPONDENTS' OPPOSITION TO PLAINTIFFS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

[Declaration of Jorge Suarez in Support Thereof]

Honorable Monica Ramirez Almadani
United States District Judge

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I. INTRODUCTION

Petitioner Artem Vaskanyan ("Petitioner") brings the instant Petition for Writ of Habeas Corpus (the "Petition") and Application for Temporary Restraining Order (the "TRO") challenging his detention pending removal pursuant to the Fifth Amendment's Due Process Clause and *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Petition, ECF No. 1; TRO, ECF No. 10. In his TRO application, Petitioner argues that he is entitled to an order precluding Respondents from transferring him outside this district so that this court would not lose jurisdiction. Petitioner also seeks an order precluding his removal to a third country without notice and an opportunity to be heard. In his Petition, Petitioner seeks immediate release.

Petitioner is not entitled to a TRO or habeas relief. He is subject to a final order of removal and efforts to remove him by DHS, ICE, and the Office of Enforcement and Removal Operation ("ERO") are ongoing. His present detention is statutorily authorized, and ERO is currently working to secure travel documents for Petitioner to Armenia, where he may qualify for citizenship based upon his Armenian heritage. The timeline to complete this process is not unreasonably lengthy. Accordingly, there is a significant likelihood of removal in the foreseeable future, and Petitioner fails to make the showing required for *Zadvydas* relief.

Because the Petition should be rejected, there is no need for interim TRO relief. However, in the interests of fully addressing Petitioner's TRO arguments, Respondents note that this Court would retain jurisdiction over the Petition even if Petitioner were to be transferred. And Petitioner is already entitled to notice and an opportunity to be heard prior to removal to Armenia pursuant to the court's order in *D.V.D. v. U.S. DHS*, No. 25-10676 (D. Mass. April 18, 2025). Petitioner has not suggested that Respondents have or will fail to comply with that order. Thus, there is no need for a duplicative order from this Court.

As Petitioner has not shown entitlement to a TRO or habeas relief, Respondents respectfully request that the Court deny the TRO and dismiss the Petition.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The following background facts are offered as not in dispute from Plaintiff's Complaint (ECF No. 1), Plaintiff's TRO Application, (ECF No. 10), the concurrently filed Declaration of Deportation Officer Jorge Suarez ("Suarez Decl.").

A. Petitioner's Entry into the United States, Criminal History, and Removal Order

Petitioner is a native of the U.S.S.R., more specifically the Soviet Republic of Azerbaijan. ECF 1 at ¶21; ECF 10 at p. 4; Suarez Decl. at ¶ 3. He is of Armenian Christian descent. ECF 1 at ¶¶ 10; 21. In approximately 1986, Petitioner fled the Soviet Republic of Azerbaijan to Russia. ECF 1 at ¶ 22. The Soviet Republic of Azerbaijan no longer exists. *Id.* at ¶ 24; ECF 10 at p. 4.

According to INS I-94 records, Petitioner first entered the United States on June 17, 1993, at New York, New York, as a refugee. Suarez Decl. at ¶ 4; ECF 1 at ¶ 23. He became a lawful permanent resident in 1994. Suarez Decl. at ¶ 5.

On December 19, 2001, the Petitioner was convicted in the Hampden Superior Court at Springfield, Massachusetts for the offense of Home Invasion, in violation of Massachusetts General Laws chapter 265, section 18C, as well as additional counts of Armed Assault with Intent to Rob, two counts of Assault and Battery with a Dangerous Weapon, and one count of Assault and Battery. Suarez Decl. at ¶ 6. For those offenses, the Petitioner was sentenced to 25 to 30 years in prison. *Id.*

On May 4, 2011, ICE placed the Petitioner into removal proceedings with the issuance of a Notice to Appear (NTA) charging the Petitioner as removable under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act). *Id.* at ¶ 7.

On April 26, 2012, the Petitioner was ordered removed to Russia, or in the alternative, Azerbaijan, by the Boston Immigration Court. *Id.* at ¶ 8. Petitioner did not

appeal, and the removal order is final. *Id.*

On November 12, 2024, Petitioner was released from Massachusetts Departments of Corrections to ICE custody. *Id.* at ¶ 9; *see also* ECF 1 at ¶ 31.

Since taking custody of Petitioner in November 2024, ICE has determined that it will not be possible to remove the Petitioner to Azerbaijan or to Russia. *Id.* at ¶ 10; *see also* ECF 1 at 46. In light of this, and based upon Petitioner's Armenian descent, ICE is currently pursuing the possibility or removing the Petitioner to Armenia. *Id.* at ¶ 12.

ICE is aware that Armenia has a well-established procedure for ethnic Armenians to obtain Armenian citizenship through a simplified application which can be processed at the Armenian consulate. *Id.* at ¶ 11.[1] In May 2025, ICE asked Petitioner to submit a citizenship application to Armenia. *See* ECF 1 at ¶ 48. Petitioner has now filled out all necessary forms to apply for recognition of Armenian citizenship and the issuance of Armenian travel documents. Suarez Decl. at ¶ 13. The requisite filings have been forwarded to the Armenian consulate for their consideration. *Id.* at ¶ 14.

Based on experience, ICE expects to receive an answer from the Armenian Consulate in reasonably short order. *Id.* at ¶ 15.

B. This Action

On June 13, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. ECF 1. Petitioner met and conferred with counsel for Respondents on the same date. *See* ECF 10 at pp. 5-6. On June 16, 2025, Petitioner filed the instant TRO Application seeking an order precluding Respondents from transferring him outside this district or removing him to a third country without notice and an opportunity to be heard. *See* ECF 10. The Parties agreed that Respondents would have 48 hours, excluding weekends and holidays, to oppose the TRO. *Id.* at p. 6.

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[1] *See also* https://www.mfa.am/en/citizenship and http://diaspora.gov.am/en/pages/119 (last accessed on June 17, 2025) for information regarding citizenship requirements for the Republic of Armenia.

III. ARGUMENT

A. Petitioner's Detention Pending Removal is Statutorily Authorized and He Does Not Qualify for *Zadvydas* Relief

The Emergency Petition and TRO Application should be denied because the underlying Petition lacks merit. Petitioner is being lawfully detained pending his removal and does not qualify for *Zadvydas* relief at this time.

Petitioner's detention is authorized under is 8 U.S.C. § 1231(a)(2), which provides that "[d]uring the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2). Under 8 U.S.C. § 1231(a)(1)(A), the government generally has 90 days to facilitate the alien's removal. *Thai v. Ashcroft*, 366 F.3d 790, 793 (9th Cir. 2004) (citation omitted); *see also* 8 U.S.C. § 1231(a)(1)(A). Where removal cannot be accomplished within the 90-day removal period, continued detention is authorized by 8 U.S.C. § 1231(a)(6) ("An alien ordered removed … who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period…").

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that 8 U.S.C. § 1231(a)(6) contained an implicit "reasonable time" limitation. *Zadvydas*, 533 U.S. at 682. The Court concluded that, for the sake of uniform administration in the federal courts, six months was a presumptively reasonable period of detention pending removal. *Id.* at 701.The Court elaborated:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing ... **This 6–month presumption**, of course, **does not mean that every alien not removed must be released after six months**. **To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.**

Zadvydas, 533 U.S. at 701 (emphasis added.)

Thus, even when an alien is detained for longer than six months, the alien is not automatically entitled to *habeas* relief. He still has the burden to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *see also Clark v. Suarez-Martinez*, 543 U.S. 371, 377–78 (2005). The Ninth Circuit has held that meeting this burden requires the alien to show that he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). Only if the alien can make this showing does the burden shift to Respondents to provide rebuttal evidence. *Zadvydas*, 533 U.S. at 701.

Here, Petitioner does not qualify for *Zadvydas* relief. Although Petitioner is correct that ICE was unable to obtain travel documents for him to Russia or Azerbaijan, that does not mean that there is no significant likelihood of removal in the reasonably foreseeable future. As Petitioner concedes, Respondents are in the process of seeking Armenian citizenship and travel documentation for Petitioner. ECF 1 at ¶ 48; *see also* Suarez Decl. at ¶¶ 11-14.

Armenia has a well-established procedure for ethnic Armenians to obtain Armenian citizenship through a simplified application which can be processed at the Armenian consulate. Suarez Decl. at ¶ 11. Petitioner is ethnically Armenian. *See* ECF 1 at ¶ 10. Petitioner has recently filled out the necessary forms to apply for recognition of Armenian citizenship and the issuance of Armenian travel documents. Suarez Decl. at ¶ 13. Those filings are still under consideration by the Armenian Consulate. *Id.* at ¶ 14. ICE expects to receive an answer from the Armenian Consulate in short order. *Id.* at ¶ 15. Under these circumstances, Petitioner is not currently facing the prospect of indefinite detention and thus is not entitled to immediate release.

Because the underlying Petition lacks merit, Petitioner is not entitled to habeas relief, much less extraordinary TRO relief.

B. Petitioner has Not Shown that he is Entitled to a TRO

1. Legal Standard

The standard for issuing a TRO is substantially identical to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Either is "an extraordinary remedy that may only be awarded upon a clear slowing that the Petitioner is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). For a TRO to issue, the moving party must demonstrate 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) a TRO is in the public interest. *See id.* at 20. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* at 24 (citation and internal quotation marks omitted).

Importantly, "[a] mandatory injunction orders a responsible party to take action," and thus, "goes well beyond simply maintaining the status quo." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (internal citations and quotation marks omitted). Accordingly, "mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases . . . ." *Id.* at 879 (quotation marks omitted).

For the reasons discussed below, Petitioner cannot meet this burden.

2. Petitioner Fails to Establish a Likelihood of Success on the Merits.

Petitioner has failed to meet his burden that he is likely to succeed on the merits of the Petition, and thus is not entitled to immediate release *or* interim TRO relief. As explained in the Declaration of Jorge Suarez, there is a significant likelihood of removal in the foreseeable future based on ERO's efforts to obtain Armenian citizenship and travel documentation for Petitioner. *See* Suarez Decl. at ¶¶ 11-15. Moreover, the process of applying for Armenian citizenship is not expected to be unreasonably lengthy. *Id.* at ¶

15. Thus, Petitioner has not shown that he is likely to be detained indefinitely.

To the extent that Petitioner argues that ICE has had plenty of time since his 2012 removal order to prepare for his removal, *see* ECF 1 at ¶ 58, ECF 10 at p. 14, it bears mention that he was only released from criminal custody and transferred to ICE on November 12, 2024. *See* ECF 1 at ¶ 31. Petitioner's removal period did not begin in 2012, but rather at the beginning of Petitioner's detention by ICE in November 2024. *See* 8 U.S.C. § 1231(a)(1)(B) (removal period begins on "the date the alien is released from detention or confinement" "if the alien is detained or confined (except under an immigration process)."

Because the Petition should be denied, there is no need to reach Petitioner's requests for interim TRO relief. However, even if the Court were inclined to reach these issues, a TRO is not warranted.

First, Petitioner is not entitled to an order precluding him from being transferred because **this Court would retain jurisdiction over the Petition even if Petitioner left the district**. Indeed, a court's jurisdiction over a § 2241 petition is not destroyed by a prisoner's subsequent transfer because a writ of habeas corpus operates not upon the prisoner, but upon the prisoner's custodian. *See Braden v. 30th Jud. Circuit Ct. of Kentucky*, 410 U.S. 484, 494–495 (1973). Jurisdiction over a § 2241 petition attaches when a petitioner files a petition in his district of confinement and names his custodian. *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change.") There is no dispute that Petitioner is within this district and has named Respondents as his custodians. Thus, there is no danger that any transfer would cause the court to lose jurisdiction or otherwise cause him irreparable harm. And Petitioner cites no authority for the proposition that he should be able to dictate when and if he may be transferred while in ICE detention. Accordingly, because this Court has and will continue to have jurisdiction over the Petition, Petitioner is not

entitled to an order precluding his transfer.

Second, **Petitioner's request for an order ensuring that he has a notice and opportunity to be heard prior to removal to Armenia is needlessly duplicative** of ERO's established protocol and the existing court order in *D.V.D. v. U.S. DHS*, No. 25-10676 (D. Mass. April 18, 2025). Petitioner has not suggested or offered evidence that Respondents have or will fail to comply with that protocol or order. Indeed, even if he had offered such evidence, it is unclear why he believes that a *second* court order would be more likely to ensure Respondents' compliance than the first. As explained in the Suarez Declaration, Respondents are aware of the *D.V.D.* order and are complying with it. Accordingly, if travel documents are issued to Petitioner, he will have an opportunity to claim a credible fear of persecution in Armenia and be heard on those issues under the *D.V.D.* order. *See* Suarez Decl. at ¶ 16.[2] If that order were to be modified or vacated and ERO's protocol amended, *then* Petitioner might have reason to seek a comparable order from a different court. But that issue is unripe at this juncture.

Because Petitioner has no substantial likelihood of prevailing on the merits of the Petition and no need for/entitlement to the requested interim relief, this factor weighs heavily in favor of denying the TRO application.

3. There is No Showing of Irreparable Harm.

Petitioner also fails to show that he faces imminent harm that is reasonably certain to occur in the near future. "[P]roving 'irreparable' injury is a considerable burden, requiring proof that the movant's injury is '*certain, great and actual*—not theoretical—

[2] Although Petitioner will receive the process afforded under the *D.V.D.* order in any case, it is notable that Petitioner has not as of yet identified any basis upon which he could claim a credible fear of persecution in Armenia, a country where he has never been, that could entitle him to relief under the CAT. *See* ECF 1 at ¶ 48 (noting only that Petitioner has never lived in Armenia, has no relatives there, and does not speak Armenian). This falls far short of showing substantial grounds for believing he would be tortured or persecuted on a protected ground. *See* 8 U.S.C. § 1231 (noting that government may not remove noncitizen to country in which there are substantial grounds for believing he would be *tortured* or face *clear probability of persecution* on a protected ground.)

and *imminent*, creating a clear and present need for extraordinary equitable relief to prevent harm.'" *Power Mobility Coal. V. Leavitt*, 404 F.Supp.2d 190, 204 (D.D.C. 2005) (quotation omitted). Notably, a "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent an injunction. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). In addition, "the certain and immediate harm that a movant alleges must also be truly irreparable in the sense that it is 'beyond remediation.'" *Elec. Priv. Info. Ctr. v. U.S. Dep't of Just.*, 15 F. Supp. 3d 32, 44 (D.D.C. 2014) (quotation omitted). The movant must "substantiate the claim that irreparable injury is likely to occur" and "provide proof . . . indicating that the harm is certain to occur in the near future." *Wis. Gas Co v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1995). That is because "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, supra*, at 22.

Here, Petitioner has submitted no evidence suggesting that any irreparable injury is likely to occur if he remains in detention without the requested relief. Petitioner bears a heavy burden to prove the likelihood of future irreparable injury, and the evidence proffered simply does not satisfy it. *See, e.g., Winter*, 555 U.S. at 22; *see also Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

Petitioner claims that he will suffer irreparable harm if he is transferred again before this Court adjudicates his Petition or if he is removed to Armenia without notice because these actions would amount to a violation of his constitutional rights. *See* ECF 10 at pp. 16-22. But as discussed above, Petitioner is not at risk of the constitutional deprivations he claims. This Court has jurisdiction and can still adjudicate his Petition if he is transferred out of the district. *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change."),

quoting Francis v. Rison, 894 F.2d 353, 354 (9th Cir. 1990).

Additionally, Respondents are aware of and complying with the *D.V.D.* court order such that Petitioner will have an opportunity to claim a credible fear of persecution in Armenia and be heard on those issues. *See* Suarez Decl. at ¶ 16. Accordingly, Petitioner's unsupported assertions that he may be removed "unlawfully and without notice" and subjected to "persecution, torture, and death" (*see* ECF 10 at p. 22,) carry little weight.

Given that Petitioner is not in any immediate risk of irreparable harm, Petitioner could have filed a noticed motion and given Respondents, and the Court, proper notice. Because Petitioner has not met his heavy burden to establish the existence of imminent and non-speculative irreparable harm, as legally required to obtain extraordinary relief, his TRO application fails.

4. The Balance of Equities Weigh in Favor of Denying Petitioner's TRO Application.

Finally, Petitioner also fails to show that the balance of equities and the public interest favor relief. These factors generally collapse into one when the government is a party. *See Pursuing America's Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016). Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest tip in favor of the Defendants.

The public interest in enforcement of United States immigration laws is significant. *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."). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with

enforcing, constitutes irreparable injury to the Respondents and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Here, Petitioner's requested relief would interfere with Respondents' enforcement of immigration laws—e.g. by prohibiting his transfer or removal—without proper justification. Petitioner is not at risk of being denied his constitutional rights; he will be afforded the process that is due to him under the *D.V.D.* order and ERO protocol if travel documents to Armenia are obtained. And he has offered no evidence that *he* is facing persecution, torture, or "a lifetime sentence in a notorious foreign prison" (*see* ECF 10 at p. 23,) if he is not afforded immediate TRO relief.

Accordingly, the balance of equities and the public interest tip in favor of the Respondents.

IV. CONCLUSION

For all of the foregoing reasons, Petitioner's Habeas Petition and TRO Application should be denied.

Dated: June 20, 2025

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Defendant United States of America,

certifies that the memorandum of points and authorities contains 3,477 words, which complies with the word limit of L.R. 11-6.1.

Dated: June 20, 2025

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