TIMOTHY COURCHAINE
United States Attorney
District of Arizona
DINA ANAGNOPOULOS
Assistant U.S. Attorney
Arizona State Bar No. 018727
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Civil Fax: (602) 514-7760
Email: Dina.Anagnopoulos@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Seyidxan Salih, Petitioner, v. David R. Rivas, et al., Respondents.	No. 25-cv-02096-PHX-SMB (MTM) **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS, MOTION FOR PRELIMINARY INJUNCTION, AND MOTION FOR LIMITED DISCOVERY**

INTRODUCTION

Respondents David R. Rivas, Warden, San Luis Regional Detention Center, Pamela J. Bondi, Attorney General of the United States, Kristi Noem, Secretary of the Department of Homeland Security, and Gregory J. Archambeault, San Diego Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), by and through counsel, respond to the Petition for Writ of Habeas Corpus (Doc. 1), the Motion for Preliminary Injunction (Doc. 3), and the Motion for Limited Discovery (Doc. 4), and request that the Court deny the requested relief. Petitioner is a repeat criminal offender who has been convicted of several violent and drug related crimes during his time in the United States. He is currently subject to a final order of removal and has been detained since January 26, 2025. He seeks a Court order directing ICE to immediately release him from immigration detention.

However, because of the serious nature of his criminal convictions and because his removal is likely to occur in the reasonably foreseeable future, the Court should deny his habeas petition and request for preliminary injunction. Finally, because discovery is generally not permitted in habeas cases, and because Petitioner has failed to establish good cause exists to permit discovery, the Court should deny the request for limited discovery. This Response is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND.

Pursuant to the DHS alien file (A-file) pertaining to Petitioner Seyidxan Salih ("Salih"), he was born in Qamisli, Syria on July 18, 1984. Exhibit A (Declaration of Detention and Deportation Officer Marcus Vera) ¶ 6. Sahil was admitted to the United States on February 10, 2003, at San Francisco, California. *Id.* at ¶ 7. On February 4, 2004, Salih filed an Application to Adjust his Status to that of a Lawful Permanent Resident with the United States Citizenship and Immigration Service (USCIS). That application was denied on March 5, 2007. *Id.* at ¶ 8.

On October 10, 2008, Salih was convicted in the Superior Court of California, County of San Diego, for the offense of vehicle theft, in violation of California Penal Code § 10851(a) and was sentenced to serve 365 days in county jail. *Id.* at ¶ 9. On May 4, 2009, Salih was placed in removal proceedings with the issuance of a Notice to Appear based on his criminal conviction. *Id.* at ¶ 10. Salih renewed his Application for Adjustment of Status before the Immigration Court as a form of relief from removal. *Id.* at ¶ 11. On September 19, 2007, an Immigration Judge granted Salih relief from removal and he was granted Lawful Permanent Resident Status. *Id.* at ¶ 12.

On March 2, 2016, Salih was convicted in the Superior Court of California, County of San Diego of violating a court issued protective order in violation of California Penal Code § 166(a). Salih engaged in conduct that violated a portion of the order that involved protection against credible threats of violence and repeated harassment to the person for whom the protection order was issued. *Id.* at ¶ 13.

On December 12, 2016, Salih was convicted in the Superior Court of California, County of San Diego for the offense of Possession of a Methamphetamine, in violation of California Health and Safety Code § 11377 (a). *Id.* at ¶ 14. On March 29, 2018, Salih was placed in removal proceedings a second time based on his criminal convictions and issued a Notice to Appear. *Id.* at ¶ 15. Salih filed an Application for Withholding of Removal to Syria before the Immigration Court as a form of relief from removal. The Immigration Judge granted Salih's Withholding of Removal on March 19, 2019. *Id.* at ¶ 16.

On February 17, 2022, Salih was convicted in the Superior Court of California, County of San Diego, of assault by means likely to produce great bodily injury in violation of California Penal Code § 245(a)(4). He received a sentence of one year in prison. *Id.* at ¶ 17. On November 11, 2022, Salih was convicted in the Superior Court of California, County of San Diego, of corporal injury to a spouse in violation of California Penal Code § 273.5(a). He was sentenced to 4 years in prison. *Id.* at ¶ 18.

On June 21, 2024, DHS filed a Motion to Reopen Removal proceedings for the purpose of rescinding Withhold of Removal based on his criminal convictions pursuant to 8 U.S.C. § 1231(b)(3)(B)(ii). *Id.* at ¶ 19. On July 9, 2024, following the completion of his criminal sentence, Salih was transferred to DHS custody in Florence, Arizona. *Id.* at ¶ 20. On July 16, 2024, an Immigration Judge granted the DHS motion to reopen removal proceedings. *Id.* at ¶ 21. On August 13, 2024, Salih declined to file any relief from removal, expressed his desire to complete immigration proceedings, and requested to be removed to Syria. The Immigration Judge granted his request and ordered him removed to Syria. *Id.* at ¶ 22.

On August 27, 2024, Salih was released from DHS custody with an Order of Supervision. *Id.* at ¶ 23. An alien released on an order of supervision is required to "obey reasonable written restrictions on the alien's conduct or activities." INA § 241(a)(3)(D). See also 8 C.F.R. § 241.5(a). *Id.* at ¶ 24. On January 27, 2025, Salih was targeted for enforcement action after ERO determined that there is a significant likelihood of removal in the reasonably foreseeable future, as the government of Syria is issuing travel documents

for Syrian nationals. *Id.* at ¶ 25. On March 28, 2025, ERO started the process of preparing a travel document request, to include a Form I-217, Information for Travel Document or Passport Request, and obtaining identity documents or information supporting Sahil's Syrian citizenship. *Id.* at ¶ 26. On April 11, 2025, ERO submitted a travel document request packet to the Detention and Deportation Officer (DDO) assigned to Syrian cases within ERO Headquarters, Removal and International Operations (RIO) for review. *Id.* at ¶ 27. On April 25, 2025, ERO was advised by the Department of State that Salih's identity was verified by the Syrian government. *Id.* at ¶ 28.

On April 29, 2025, Salih was provided with information regarding a Post-Order Custody Review (POCR), but he refused to sign an acknowledgment of receipt. *Id.* at ¶ 29. On May 6, 2025, a completed travel document request was forwarded to the DDO for approval. *Id.* at ¶ 30. On May 27, 2025, the travel document request was forwarded to the Syrian government for issuance of a travel document. *Id.* at ¶ 31.

DHS confirms that there is a significant likelihood it will obtain Salih's travel documents to Syria. *Id.* at ¶ 33. The United States has removed 41 individuals to Syria in 2025 and the Syrian government has confirmed Salih's Syrian identity – a key indication it will provide travel documents. *Id.* at ¶ 34.

II. ARGUMENT.

A. Standard Governing Detention of Aliens with Final Removal Orders.

The detention, release, and removal of aliens subject to a final order of removal is governed by § 241 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the United States after an order of removal becomes final. During this "removal period," detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been removed and remains in the United States, his detention may be continued, or he may be released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3) and (a)(6). ICE may detain an alien for a "reasonable time" necessary to effectuate the

alien's removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable period of detention for aliens, like Petitioner, who are detained under section 1231(a). *See Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the alien makes that showing, the Government must then introduce evidence to refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The court must "ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

B. Petitioner's Detention is Lawful and Constitutionally Permitted.

To be entitled to release from detention, Petitioner has the burden to show that his removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the Government to show that removal is significantly likely to occur in the reasonably foreseeable future. *Id.* Petitioner has not met his burden to show that his removal is unlikely in the reasonably foreseeable future and, even if he could, the Government can overcome that with evidence showing that his removal is in fact likely in the reasonably foreseeable future.

In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable period of time to allow the Government to remove an alien detained under 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after six months of detention. *Id.* at 701 ("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.") (emphasis added). The passage of time alone is insufficient to establish that no significant likelihood of removal exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In *Lema*, where the alien had been detained for more than a year, the district court held that the passage of time was only the first step in the analysis, and that the alien must then provide good reason to believe that no significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

Petitioner cannot establish that his removal is not likely to occur in the reasonably foreseeable future. As an initial matter, Petitioner's detention is not prolonged. Petitioner has only been detained since January 26, 2025 (Doc. 1, ¶ 3), a period of approximately five months—one month less than the presumptively reasonable six-month period under *Zadvydas*. Petitioner cannot demonstrate that his detention is unconstitutionally prolonged where he is detained within the presumptively reasonable six-month removal period established by *Zadvydas*. *Zadvydas,* 533 U.S. at 701. Even if he could, it would be his burden to establish that his removal ***at this time*** is not likely, *Zadvydas*, 533 U.S. at 701, which he cannot do.

In *Zadvydas*, the Court emphasized that the "basic purpose" of immigration detention is "assuring the alien's presence at the moment of removal" and concluded this purpose was not served by the continued detention of aliens whose removal was not "reasonably foreseeable." *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas* because no country would accept the deportees or because the United States lacked an extradition treaty with their home countries. Similarly, in *Clark v. Martinez*, 543 U.S. 371, 386 (2005), an alien's removal to Cuba was not reasonably foreseeable when the Government conceded "that it is no longer even involved in repatriation negotiations with Cuba." *Id.* at 386. And in *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006), the Court of Appeals relied on the apparent impossibility of removal in holding that an alien's continued detention was not authorized where the Board of Immigration Appeals had twice awarded the alien asylum, as well as protection under the Convention Against Torture, yet

his detention continued for over five years while the Government appealed the decisions. *Id.* at 1081. The Ninth Circuit held that Nadarajah had successfully demonstrated that, as a result of the asylum and CAT determinations, there was a "powerful indication of the improbability of his foreseeable removal." *Id.* This case is distinguishable from *Zadvydas*, *Clark*, and *Nadarajah* because Petitioner is an alien whom the Government lawfully can remove and is in the process of removing.

Here, the Government specifically re-detained Petitioner because there is a significant likelihood of removal in the reasonably foreseeable future. Ex. A at ¶ 25. Indeed, the Government has been receiving travel documents from Syria and has, thus far, removed 41 individuals to Syria in 2025. *Id.* at ¶ 34. The request for Salih's travel documents was submitted on May 27, 2025, and accordingly, the Government expects Salih's travel documents from Syria to issue imminently. *Id.* at ¶¶ 31-33.

Petitioner cites to various reports by Human Rights Watch and State Department Country Reports, that are over 20 years old, to imply that he is "stateless" because he is Kurdish and would not be recognizes as a Syrian citizen, such that his removal there is not likely in the reasonably foreseeable future. Doc. 1, ¶¶ 10(a-c). However, these reports provide no particularized or concrete information to indicate that the Syrian government does not recognize Petitioner as a citizen or that he could not be successfully removed there. Rather, the evidence demonstrates the opposite—that DHS has been swiftly receiving travel documents and removing individuals to Syria. Petitioner has identified no specific reason it cannot do so in this case. Indeed, the Syrian Government has even confirmed Petitioner's identity – a key indication that it will likely issue travel documents. Petitioner cannot meet his burden to establish that his removal to Syria is unlikely in the reasonably foreseeable future, based merely on his allegation that he will not be recognized as a citizen because he is Kurdish. There is no evidence beyond generalized reports to substantiate this claim and he has therefore not met his burden to establish he is entitled to release under *Zadvydas. Zadvydas*, 533 U.S. at 701.

Rather, because there is a significant likelihood of removal in the reasonably foreseeable future, Salih's detention is not unconstitutionally indefinite as contemplated by *Zadvydas*. *Id.* Indeed, uncertainty as to Petitioner's exact removal date does not warrant his release. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1064 (9th Cir. 2008). In this case, there is simply no reason to believe that Syria will not issue a travel document for Petitioner, and no reason why Petitioner cannot be removed to Syria once the travel document is received. Petitioner's detention is not prolonged, is not indefinite, and is constitutional—his Petition should be denied.

III. A PRELIMINARY INJUNCTION IS NOT WARRANTED.

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren,* 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.,* 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result" but is instead an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken v. Holder,* 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States,* 272 U.S. 658, 672 (1926)).

A. Plaintiff Cannot Establish a Likelihood of Success on the Merits.

As argued above, Petitioner cannot establish a likelihood of success on the merits because he cannot meet his burden to demonstrate that his removal is unlikely in the reasonably foreseeable future. In contrast, the Government has established that he is still detained within the presumptively reasonable six-month removal period. Further, the Government has completed a travel document request that has not been rejected by Syria who is currently issuing travel documents, and the Government reasonably expects travel

documents to issue soon. Ex. A. at ¶¶ 31-34. Petitioner is unlikely to succeed on his claim that his continued detention is unlawful.

B. Plaintiff Cannot Establish Irreparable Harm.

The only claim Petitioner makes with respect to irreparable harm is that his "illegal confinement is quintessentially irreparable harm." Doc. 3 at p. 2. But as established, Petitioner's five-month confinement is neither illegal nor unconstitutional. *Zadvydas*, 533 U.S. at 701. Because his removal is significantly likely to occur in the reasonably foreseeable future, habeas relief should not be granted as he has not established any irreparable harm from his continued detention while the Government executes his removal order.

C. The Public Interest and Balance of the Equities Favors the Government.

Where the Government is the opposing party, the balance of equities and public interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party, courts "cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the applicant's favor." *Id.* at 436 (citation and internal quotation marks omitted). Here, the public interest weighs in favor of denying the motion for a preliminary injunction. "Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest lies in the Executive's ability to enforce U.S. immigration laws and to keep convicted criminal aliens detained pending execution of their removal orders.

D. The Court Should Require a Bond.

If the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ. P. 65(c), which states "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added). Here, because Petitioner is subject to removal, the amount of any bond should be akin to an appearance bond.

IV. LIMITED DISCOVERY IS NOT WARRANTED.

A habeas petitioner is not entitled to discovery "as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904, (1997); *see Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th Cir. 1993). Indeed, there is no general right to discovery in habeas proceedings. *See Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th Cir.1993). Rather, Rule 6 of the Rules Governing Section 2254 Cases provides that "[a] judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery." Rule 6(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

Whether a petitioner has established "good cause" for discovery requires a habeas court to determine the essential elements of the petitioner's substantive claim and evaluate whether "specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is...entitled to relief." *Bracy*, 520 U.S. at 908–09. Conversely, good cause "cannot arise from mere speculation" and "cannot be ordered on the basis of pure hypothesis[.]" *Arthur v. Allen*, 459 F.3d 1310, 1311 (11th Cir. 2006); *see also Farrow v. United States*, 580 F.2d 1339, 1360 (9th Cir. 1978) (denying further discovery because appellant failed to present more than conclusory allegations).

Here, Petitioner's allegation that he could be considered stateless is completely unsupported. *See generally* Ex. A. Nor is there any evidence he is unable to be removed to Syria. Salih's identity was verified by the Syrian government and the Government of Syria has received and accepted the U.S. Government's request for travel documents. *Id.* at ¶¶ 28 and 31. Syria has made no indication that Salih is not a citizen of Syria. *Id.* Accordingly, the Government expects travel documents from Syria to issue soon. *Id.* Discovery is not likely to resolve Petitioner's purely speculative assertions that he is not a citizen of Syria given the record evidence that he is. Discovery is also unnecessary given the United States documented successful attempts to secure travel documents with the Syrian government and the significant likelihood of removal in the near future. For these reasons, there is no good cause for discovery.

V. CONCLUSION.

For the reasons set forth in this Response, the Petition for Writ of Habeas Corpus, the Motion for Preliminary Injunction, and the Motion for Limited Discovery should all be denied.

RESPECTFULLY SUBMITTED July 7, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/*Dina Anagnopoulos*
DINA ANAGNOPOULOS
Assistant United States Attorney
Attorneys for Respondents