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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 MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND AMENDED HABEAS PETITION**

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 Motion for Temporary Restraining Order and a Preliminary Injunction (Doc. 25) and the Amended Petition for Writ of Habeas Corpus (Doc. 22). In his motion for Temporary Restraining Order and Preliminary Injunction, Petitioner requests that this Court temporarily restrain and preliminarily enjoin Respondents from removing Mr. Salih to any third country without adequate notice and an opportunity to seek relief from removal to that country based on a fear of persecution or torture there. *Id.* Critically, however, Respondents have not sought to remove Petitioner to a third country, only to his native

country of Syria. Therefore, the Court should deny the motion for injunctive relief (Doc. 25). Further, because there is a likelihood of removal to Syria in the reasonably foreseeable future—indeed, within the next thirty days—the Court should likewise deny the Amended Habeas Petition where Petitioner is lawfully and constitutionally detained under 8 U.S.C. § 1231 consistent with the statute's basic purpose of effectuating removal.

I. PROCEDURAL HISTORY

On June 14, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, a Motion to Appoint Counsel, a Motion for Preliminary Injunction, and a Motion for Limited Discovery. (Docs. 1-4). The original habeas petition and motion for injunctive relief challenged Petitioner's ongoing detention under 8 U.S.C. § 1231 and argued generally that he was "stateless" because Syria would not accept him due to him being Kurdish. (*See generally,* Docs. 1, 3). Accordingly, the original petition and motion for injunctive relief argued that there was no significant likelihood of his removal in the reasonably foreseeable future—and that, therefore, his detention was unconstitutionally indefinite, and he was entitled to release under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Id.*

Respondents filed a Response to the Petition for Writ of Habeas Corpus, Motion for Preliminary Injunction and Motion for Limited Discovery on July 7, 2025. (Doc. 16). Respondents argued that Petitioner was lawfully detained under 8 U.S.C. § 1231 and that his detention was not unconstitutionally indefinite under *Zadvydas* because he was still detained within the six-month presumptively reasonable period established by *Zadvydas*, and there was a likelihood that Syria would issue travel documents and therefore that Petitioner would be removed to Syria in the reasonably foreseeable future. *Id.* (citing *Zadvydas*, 533 U.S. at 689).

On July 21, 2025, Respondent's requested additional time to respond to Petitioner's pending Motion for Discovery and also provided the Court with a status update that it had received travel documents. (Doc. 21). While the status update did not specifically state that the travel documents issued were from Syria, it was clear from Respondents' previous response that the travel documents being sought were from Syria. (Doc. 16). Nevertheless,

Petitioner filed an Amended Habeas Petition and Motion for Temporary Restraining Order and Preliminary Injunction – both of which primarily challenge Respondent's ability to remove Petitioner to a third country, other than Syria.

As demonstrated below, the Government is not seeking to remove Petitioner to a third country. Petitioner's own country of citizenship, Syria, issued the travel documents. Therefore, the motion for injunctive relief asking the Court to restrain removal to a third country, Doc. 25, should be denied. Finally, due to the issuance of travel documents from Syria, Petitioner is not indefinitely detained under *Zadvydas* where his removal to Syria is significantly likely to occur in the next thirty days. Therefore, his amended habeas petition should also be denied.

II. THE COURT SHOULD DENY THE AMENDED HABEAS PETITION.

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). *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 significantly likely in the reasonably foreseeable future—indeed, within the next thirty days. (*See* Exhibits A and B).

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.") 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), now a period of approximately six months—within 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 directly inapposite to *Zadvydas*, *Clark*, and *Nadarajah* because Petitioner is an alien whom the Government lawfully can remove and their native country, Syria, has now issued travel documents permitting Petitioner to be removed there and the Government is in the process of removing him there. (Ex. B. ¶ 3).

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. (*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, in direct conflict with Petitioner's allegations, on July14, 2025, Syria issued travel documents for Petitioner to be removed there and the Government expects his removal there to take place within the next thirty days. (Ex. B. ¶ 3).

Because travel documents have been issued by Syria, there is a significant likelihood of removal in the reasonably foreseeable future—therefore, Salih's detention is not unconstitutionally indefinite as contemplated by *Zadvydas*. The Court should deny Ground One of the Amended Habeas Petition.

C. Petitioner is not Being Removed to a Third Country.

The Government has received travel documents from Syria, Petitioner's native country, and has imminent plans to remove him there within the next thirty days. (*See generally* Ex. B). The Government is not currently seeking to remove Petitioner to any third country. The Court should dismiss ground Two of the Amended Habeas Petition.

D. The Court does not have Jurisdiction Over a Challenge to Petitioner's Immigration Custody Under the Administrative Procedures Act ("APA")

The APA permits review only of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find Petitioner's immigration custody to be improper,

the Court is without jurisdiction to review his detention challenges under the APA. *See Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("[B]ecause plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim."); *see also Vetcher v. Sessions*, 316 F. Supp. 3d 70, 78 (D.D.C. 2018) ("release from custody" is a "demand [ ] certainly cognizable through the writ of habeas corpus") (emphasis omitted) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973)); *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 381 (S.D.N.Y. 2023)

III. STANDARD FOR ISSUING A TEMPORARY RESTRAINING ORDER.

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). 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 [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is aptly described as a "heavy" one. *Id.*

IV. 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). 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.

For all the reasons argued above, Petitioner cannot establish a likelihood of success on the merits of his Amended Habeas Petition. He cannot meet his burden to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future where his native country of Syria has agreed to accept him, issued his travel documents, and his removal is scheduled within the next thirty days. Indeed, the Government has established that Petitioner is still detained within the presumptively reasonable six-month removal period. (Doc. 16). In addition, the Government recently obtained Petitioner's travel documents from Syria (*See* Declaration of Marcus Vera, Exhibit B ¶ 3) and it is anticipated that Petitioner will be removed within the next thirty days. (*Id.* at ¶ 4). As established, Petitioner's claim that he may potentially be removed to a third country is an unfounded assumption. The fact is, the Government is seeking to remove him to his native country of

Syria and now that Syria has issued travel documents, this is significantly likely to occur within the next thirty days. Therefore, Petitioner is unlikely to succeed on the merits of his habeas claim and is not entitled to injunctive relief—particularly where his request is based on a potential third country removal which is not being sought here. Finally, Petitioner is not likely to succeed on the merits of his habeas claim because the APA does not provide for judicial review of immigration detention. Because, for all these reasons, Petitioner cannot succeed on the merits of his Amended Habeas Petition, the Court should deny Petitioner's request for injunctive relief.

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. 25, p. 3). To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. First, although Petitioner alleges "illegal confinement," as previously argued (*see generally* Doc. 16), Petitioner's now six-month confinement is neither illegal nor unconstitutional. *Zadvydas*, 533 U.S. at 701. In addition, because Petitioner's removal to Syria is significantly likely to occur in the next thirty days, Petitioner cannot show irreparable harm.

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. Here, Petitioner has been convicted of inflicting corporal injury on a domestic partner and is subject to a valid

final removal order set to be executed imminently. The public interest lies in keeping Petitioner detained in order to effectuate removal which is the undergirding statutory purpose of 8 U.S.C. § 1231.

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). Here, because Petitioner is subject to removal, the amount of any bond should be akin to an appearance bond.

V. CONCLUSION.

For the reasons set forth in this Response, the Motion for Temporary Restraining Order and a Preliminary Injunction and the Amended Habeas Petition should be denied.

RESPECTFULLY SUBMITTED July 30, 2025.

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