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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KHALID FAWZI ZAKZOUK,
Petitioner-Plaintiff,

v.

MOISES BECERRA, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office;

TODD LYONS, Acting Director of United States Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of the United States Department of Homeland Security,

PAM BONDI, Attorney General of the United States,
Respondents-Defendants.

No.: 4:25-cv-06254

Petitioner-Plaintiff's Reply to Opposition to Motion for Temporary Restraining Order and Motion for Preliminary Injunction

Date: October 2, 2025
Time: 1:30 p.m.
Courtroom: Oakland Courthouse
1301 Clay Street
Oakland, California 94612

Honorable Kandis A. Westmore
United States Magistrate Judge

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Petitioner, Khalid Fawzi Zakzouk ("Mr. Zakzouk"), respectfully submits this reply to the government's opposition to his motion for a temporary restraining order and preliminary injunction. *See* Resp'ts' Opp'n to Mot. for TRO [and PI] ("Opp'n"), ECF No. 14; Mot. for TRO/PI ("Mot."), ECF No. 2.

Mr. Zakzouk reiterates that the government has yet to provide to him a copy of his alien file pursuant to a FOIA request and thus can respond to the government's opposition only based on his memory and documents they have filed.

Factual Background

The government's factual summation reveals the lack of opportunity that Mr. Zakzouk had to apply for relief from removal and to have an IJ determine whether he merits withholding or deferral of removal from any country. *See* ECF No. 14 at 14–15. Per the IJ decision dated February 18, 2003, denying Mr. Zakzouk's motion to reopen, filed through counsel,[1] "his attorney informed him that his hearing commenced at 1:00 p.m. on January 24, 2000, therefore he did not arrive at the Immigration Court until that time." ECF No. 14-1 at 9. The IJ denied the motion to reopen because Mr. Zakzouk "[had] not satisfied the [procedural] elements set forth in *Matter of Lozada*, [19 I&N Dec. 637 (BIA 1988)]" i.e., "[t]he respondent has not submitted an affidavit and has not explained why he has not filed a complaint with the appropriate disciplinary authorities," raising the significant possibility that Mr. Zakzouk's attorney did not apprise him of the motion to reopen or the *Lozada* procedural requirements and rendered additional ineffective assistance of counsel in doing so. ECF No. 14-1 at 9.

More importantly, and as the government recognizes, Mr. Zakzouk "requested an opportunity to apply for asylum," and due to his attorney's ineffective assistance, he "failed to

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[1] Because the government has neither responded to Mr. Zakzouk's FOIA request nor filed the motion to reopen with its brief opposing the TRO/PI motion, it is unclear whether the attorney who filed the motion to reopen on Mr. Zakzouk's behalf was also the attorney who misinformed him as to the time of his hearing, forming the basis of the ineffective assistance claim giving rise to the motion to reopen. *See* ECF No. 14-1 at 8–10 (Ex. 2, IJ order denying MTR).

appear for his court hearing on [that matter]." ECF No. 14 at 14. Because he was ordered removed *in absentia*, Mr. Zakzouk has *never* had the opportunity to apply for relief, and no IJ has ever determined that Mr. Zakzouk cannot establish an objective fear of harm if removed to any country.

Additionally, Section C of the government's "Factual Background" contains a section insisting that the government had "no intention of detaining or arresting" Mr. Zakzouk at his administrative check-in appointments on July 17, July 21, and July 28. ECF No. 14 at 15. The government goes on to reference a future appointment on October 28 but remains notably silent as to ICE's intent to take Mr. Zakzouk into custody on that date. *Id.* Based on the government's repetitive insistence that ICE "had no intention" at the prior appointments and silence as to their intent regarding the October 28 appointment, it may be reasonably inferred that ICE plans to take Mr. Zakzouk into custody next month without an order from this Court restraining them from doing so. Further, the government's opposition to Mr. Zakzouk's motion for a TRO and PI is consistent with ICE's intent to take him into custody, for if ICE did not intend to take Mr. Zakzouk into custody, such relief would be merely redundant.

Argument

I. This Court has jurisdiction over Mr. Zakzouk's habeas petition.

A. Mr. Zakzouk's habeas claim is properly asserted as a pre-deprivation cause of action.

The government claims that Mr. Zakzouk's habeas claims are "not cognizable" because he is not "in custody." *See* ECF No. 14 at 16. But as noted in Mr. Zakzouk's motion for a temporary restraining order and preliminary injunction, ICE requested his return on July 21 "to apply for travel documents to Saudi Arabia and Jordan," and "[n]umerous credible reports demonstrate that, across the country, including in San Francisco and other Bay Area cities, individuals are being called in for check-ins and then arrested by ICE." ECF No. 2 at 8–9.

In the context of noncitizen habeas petitions, courts have construed "in custody" broadly to include "restraints short of physical confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 437

(2004); *see also Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995) ("We have broadly construed 'in custody' to apply to situations in which [a noncitizen] is not suffering any actual physical detention."). All that a petitioner must show is that they are subject to a significant restraint on liberty "not shared by the public generally." *Jones v. Cunningham*, 371 U.S. 236, 239–40 (1963).

ICE's recent actions of scheduling Mr. Zakzouk for check-in appointments "to apply for travel documents" indicate that ICE plans to attempt his removal to those countries, which will likely entail his detention, based on ICE's practices. These steps give rise to Mr. Zakzouk's habeas petition because it appears that ICE seeks to change the conditions of his custody by re-detaining him in anticipation of his removal to Saudi Arabia or Jordan. Supreme Court precedent recognizes that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued release. *Morrissey v. Baker*, 408 U.S. 471, 482 (1972) ("[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others."). *See also Tello v. Barr*, No. 19-cv-01312-CRB, 2025 WL 2280544, at *1–2 (N.D. Cal. July 29, 2025) (finding jurisdiction to review a habeas claim "seeking to prevent DHS from detaining him"). The government, despite its various protestations, has not assured this Court or Mr. Zakzouk that it has no intent to take him into custody. Thus, Mr. Zakzouk's anticipated re-detention renders his habeas claim cognizable.

The government also argues that this Court would not have jurisdiction "because any such detention would not be in the Northern District of California" and offers a link to the list of the facilities under the jurisdiction of the San Francisco Field Office. ECF No. 14 at 17 (citing *Doe v. Garland*, 109 F. 4th 1188, 1199 (9th Cir. 2024), for the principle that "core habeas petitions must be filed in the district of confinement"). But this argument ignores that the San Francisco Field Office will most likely first detain Mr. Zakzouk at its office in San Francisco,

California—within the Northern District of California—and thus the anticipated detention will commence within this court's jurisdiction.

Accordingly, Mr. Zakzouk's habeas petition is cognizable because he seeks to prevent his re-detention.

B. Courts read the jurisdiction-stripping provision at 8 U.S.C. § 1252(g) narrowly.

The INA limits judicial review in many instances. Though 8 U.S.C. § 1252(g) precludes this Court from exercising jurisdiction over the executive's decision to "commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen]," there is no removal order at issue here. Instead, the question presented is whether the Court has authority to review the anticipated termination of Mr. Zakzouk's release on an order of supervision. The argument that the termination of Mr. Zakzouk's release "arises" from a removal order fails considering *Jennings v. Rodriguez*, 583 U.S. 281 (2018), in which the court held that § 1252(g) precludes judicial review only as to the three areas specifically outlined in the subsection. *Id.* at 294. "[N]umerous courts have found that jurisdiction exists in this context and have evaluated conduct like that alleged here." *Maklad v. Murray*, No. 1:25-cv-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025).

Further, as the Ninth Circuit recognized in *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, on August 27, 2025, "[t]he Supreme Court has given a 'narrow reading' to § 1252(g)." *Id.* at *6 (citing *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 487 (1999), and *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) ("Section 1252(g) is . . . narrow.")). Specifically, the Supreme Court "has characterized § 1252(g) as a 'discretion-protecting provision'" and has written that "[s]ection 1252(g) was directed against a particular evil: attempts to impose judicial constraints against *prosecutorial discretion*." *Ibarra-Perez*, *supra*, at *6 (emphasis added) (quoting *AADC*, 525 U.S. at 487, 485 n.9).

Accordingly, § 1252(g) is inapplicable, and this Court retains jurisdiction over this action.

C. Mr. Zakzouk does not challenge his removal order or proceedings, so 8 U.S.C. §§ 1252(a)(5) and (b)(9) are irrelevant.

Here, again, the government advocates for misapplication of the statute. 8 U.S.C. § 1252(b)(9) requires review of removal orders to be undertaken by the Court of Appeals. *See also* 8 U.S.C. § 1252(a)(5) (providing that review by the Court of Appeals is the "exclusive means for judicial review of an order of removal . . . .") The government seeks to expand the wingspan of § 1252(a)(5) to Mr. Zakzouk's potential re-detention, but custody determinations and removal orders are distinct processes, each with separate mechanisms for judicial review.

Further, the plain language of the section has nothing to do with this habeas petition or the requested relief. None of the cases on which the government relies bears remote relevant relation to this habeas action—not the facts, not the procedural posture, and not the relief requested. To shoehorn this habeas petition into the jurisdictional bar created by § 1252(b)(9), the government claims that Mr. Zakzouk "chose to file a habeas petition in this Court to challenge his removal," urging that the Court should construe his habeas petition to be something it is not. ECF No. 14 at 19. Section 1252(a)(5) is simply not an available avenue of relief here, as it pertains to appeals of final orders of removal for review by a Court of Appeals, and Mr. Zakzouk's habeas petition does not challenge the validity of his removal order but rather ICE's intent to re-detain him for removal despite releasing him **nearly 20** years ago when they were unable to remove him.

As the Supreme Court held in *Jennings*, "cramming review of . . . questions [concerning inhumane detention conditions or a claim related to actions during detention] into the review of final removal orders would be absurd." 583 U.S. at 293. If even challenges to detention conditions are not barred, then it follows that the manner in which an individual is arrested and detained is also not barred. Similarly, the Supreme Court held that § 1252(b)(9) is "certainly not a bar where, as here, the parties are not challenging any removal proceedings." *Regents of the*

Univ. of Cal., 591 U.S. at 19. And, as the Ninth Circuit held in *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2018), "claims that are independent of or collateral to the removal process do not fall into the scope of § 1252(b)(9)." *Id.* at 1032.

Accordingly, §§ 1252(a)(5) and (b)(9) are inapplicable, and this Court retains jurisdiction over Mr. Zakzouk's claims.

D. The Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") is irrelevant because this habeas petition does not request review of a "claim arising under CAT" or DHS's implementation of CAT but rather challenges his anticipated re-detention and lack of opportunity to apply for CAT relief prior to removal.

The government argues that FARRA, codified at 8 U.S.C. § 1231 (note), "precludes" Mr. Zakzouk's claims because "[a]ny judicial review of any claim arising under CAT is available, if at all, exclusively . . . 'as part of the review of a final order of removal' in the courts of appeals. *See* 8 U.S.C. § 1252(a)(4)." ECF No. 14 at 20. But, like the government's other arguments against jurisdiction, FARRA is inapplicable because Mr. Zakzouk does not advance a claim under the Convention Against Torture ("CAT") or review thereof; he seeks review of only his potential re-detention and *notice and opportunity* to apply for CAT relief if removal becomes reasonably foreseeable.

Further, the government's opposition cites *Trinidad y Garcia v. Thomas*, 683 F.3d 952 (9th Cir. 2012), in its argument urging this Court to find a jurisdictional bar in FARRA, but the *Trinidad y Garcia* court unanimously found that FARRA *did not* "repeal[] all federal habeas jurisdiction," *id.* at 956, and, moreover, ruled that the petitioner was indeed entitled to due process in the Secretary of State's compliance with the regulations implementing CAT:

> Trinidad y Garcia's liberty interest under the federal statute and federal regulations entitles him to strict compliance by the Secretary of State with the procedure outlined in the regulations. He claims that the procedure has not been complied with, and the Constitution itself provides jurisdiction for Trinidad y Garcia to make this due process claim in federal court. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics,* 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed.2d 619 (1971).

Id. at 957.

Accordingly, FARRA does not bar this Court from exercising jurisdiction over Mr. Zakzouk's claims.

II. Notwithstanding the government's arguments, Mr. Zakzouk merits a temporary restraining order and preliminary injunction.

A. Mr. Zakzouk is likely to succeed on the merits and has raised serious questions going to the merits of his claims.

1. The Ninth Circuit has long rejected the government's argument that those detained under 8 U.S.C. § 1231(a)(6) can be re-detained without process.

The government's first argument is that Mr. Zakzouk's claim is "premature" because he "cannot show that he is subject to prolonged detention or that his removal is unlikely to occur in the reasonably foreseeable future." ECF No. 14 at 21. It is true that *Zadvydas v. Davis*, 533 U.S. 678 (2001), determined that a noncitizen is not entitled to habeas relief until after the expiration of the presumptively reasonable six-month period of detention under § 1231(a)(6) unless he can show the detention is "indefinite," i.e., that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." ECF No. 14 at 21.

But a released individual's interest in avoiding re-detention is different from a detainee's interest in having ongoing periodic reviews of prolonged detention. "[P]ut succinctly, revocation implicates a liberty interest that inheres in the Due Process Clause, and the denial of eligibility for [release] does not." *Pruitt v. Heimgartner*, 620 F. App'x 653, 657 (10th Cir. 2015). Thus, although prisoners may not have a constitutional right to be assessed for parole, parolees who have already been released have a constitutional due process right to a hearing prior to being re-incarcerated. *Cf. Jago v. Van Curen*, 454 U.S. 14, 17, 21 (1981) (distinguishing the liberty interests of a parolee who had *already* been released from those of a prisoner who expected to receive parole but was denied release, which were not cognizable). Likewise, even if immigration detainees must wait months before a periodic re-review of their detention, those already released on immigration bond possess an interest in their continued liberty, which grows over time, and a due process right before being re-detained. *See Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, *5–6 (N.D. Cal. July 17, 2025). Moreover, according to

the government's reasoning, even if Mr. Zakzouk was released after six months of re-detention, ICE could simply turn around the next day and re-detain him after the release, and he would be unable to have the decision reviewed by a neutral arbiter for another six months.

The government's second argument is that Mr. Zakzouk's "procedural due process interest in his release" "terminated when the IJ ordered his removal." ECF No. 14 at 22. But "the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see also Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the governments discretion to incarcerate non-citizens is always constrained by the requirements of due process"). Mr. Zakzouk, who has resided in the United States for over 37 years, since June 1, 1988, is entitled to this constitutional protection. *Contrast Zadvydas*, 533 U.S. at 693, *with DHS v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020) (holding that an individual apprehended 25 yards into U.S. territory had not "effected an entry," and his due process rights related to his expedited removal were limited to those "provided by statute"). In *Zadvydas*, an individual who had been ordered removed challenged his indefinite confinement under 8 U.S.C. § 1231(a)(6). 533 U.S. at 682. The government argued that "whatever liberty interest [Zadvydas] possess[es], it is 'greatly diminished' by [his] lack of a legal right to live at large in this country,'" and he could be detained indefinitely. *Id.* at 696 (citations omitted). The Supreme Court declined to so limit his due process right, finding that even though Zadvydas was detained and deportable, his liberty interest was "at the least, strong enough to raise a serious question" regarding the permissibility of detaining him indefinitely. *Id.* Mr. Zakzouk's liberty interest is even greater than Zadvydas's. Unlike Zadvydas, ICE released Mr. Zakzouk in 2008, and he has been freely and openly living, working, and caring for his family for nearly two decades.

Third, the government insists that Mr. Zakzouk "has no basis to assert a procedural due process right to his prior bond, or for an additional hearing, because he has a final order of removal, and any detention would be to effectuate his removal to a third country." ECF No. 14 at

22. The government's argument ignores the Ninth Circuit's decision in *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) ("*Diouf II*"), which held that the "liberty interests of persons detained under § 1231(a)(6) are comparable to those of persons detained under § 1226(a)." *Id.* at 1086–87. (noting that any difference would be "at the margin").[2] The fact that Mr. Zakzouk is subject to discretionary conditions of release likewise does not mean he lacks a protectable liberty interest and can be re-detained without process. Under *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Young v. Harper*, 520 U.S. 143 (1997), revocation of parole is a "grievous loss" that can be taken away only upon review at a hearing before a neutral arbiter, regardless of whether government agents otherwise have statutory authority to detain. *Morrissey*, 408 U.S. at 482, 489; *Young*, 520 U.S. at 148.

Accordingly, Mr. Zakzouk retains constitutional due process rights, including a right to process prior to re-detention, even if that detention is under § 1231(a)(6).

2. Mr. Zakzouk is entitled to a pre-deprivation hearing.

The government claims that Mr. Zakzouk "can cite no liberty or property interest to which due process protections attach." ECF No. 14 at 22. But if a parolee serving out a sentence for a violent crime, and subject to highly restrictive conditions of release, has a sufficiently strong liberty interest to be entitled to a hearing prior to re-incarceration, then a noncitizen freed from civil detention on bond likely has a similar entitlement. In an order granting a preliminary injunction in *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025), the court commented:

> This Court has been unable to identify any other context in which government agents could permissibly take someone who had been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter. The Court issued a notice of questions the day prior to oral argument inviting [the government] to identify any examples of a court blessing the constitutionality of such an arrangement. [The government's] counsel conceded

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[2] While the Supreme Court rejected the Ninth Circuit's statutory interpretation in *Diouf II*, the Court declined to address *Diouf II*'s due process analysis, which thus remains binding precedent. *See Jennings v. Rodriguez*, 583 U.S. 281, 313 (2018) ("we do not reach" the "constitutional arguments on their merits").

> that they could identify none. To the contrary, numerous district courts have uniformly recognized that there are, at the very least, serious questions as to whether due process requires non-citizens released by a valid order from an IJ to receive a hearing before a neutral arbiter either before or immediately after re-detention. The Court has been unable to identify any court that has agreed with [the government's] position that those non-citizens may be re-detained without any such hearing for at least six months, and [the government] has identified none.

Guillermo, *supra*, at *7 (footnote omitted).

In a footnote, the *Guillermo* court identified the following cases as examples of the "numerous" courts recognizing the "serious questions" regarding re-detention: *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1606294 (N.D. Cal. May 20, 2022); *Enamorado v. Kaiser*, No. 25-cv-04072- NW, 2025 WL 1382859 (N.D. Cal. May 12, 2025); *Garcia v. Bondi*, No. 25-cv-05070-JSC, 2025 WL 1676855 (N.D. Cal. Jun. 14, 2025); *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854 (N.D. Cal. Jun. 14, 2025); *Doe v. Becerra*, No. 25-cv-00647-DJC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025); *Garro Pinchi v. Noem*, No. 25-cv-05632-RFL, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *Singh v. Andrews*, No. 25-cv-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Castanon Domingo v. Kaiser*, No. 25-cv-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14, 2025). *See id.* at *7 n.4.

The *Guillermo M.R.* court concluded, "There is a substantial risk that Petitioner will be erroneously deprived of his liberty interest absent a pre-detention hearing before a neutral arbiter." *Id.* at *7. The government claims that the procedures at 8 C.F.R. § 241.4 are "more than adequate and unquestionably provide [Mr. Zakzouk] notice and opportunity to be heard at the start of and throughout any future detention." ECF No. 14 at 24. But each of these procedures is essentially no more than a request to ICE's arresting agents or their supervisors at headquarters to reconsider the agency's unilateral detention decision. Section 241.4(l)(1) requires notice and "an initial informal interview [with ICE] promptly" after return to custody "to respond to the

reasons for revocation." There is no further description of procedural safeguards imposed by this "informal interview," nor is there any provision permitting consideration by a neutral arbiter. Three months later, ICE is required to perform a records review and interview, including an "evaluation of any contested facts." 8 C.F.R. § 241.4(l)(3). Once again, there is no opportunity to have a neutral party evaluate ICE's unilateral determination of the contested facts. 8 C.F.R. § 241.4(h) and (k) contemplate further custody review by ICE, with the same limitations. The lack of any neutral review creates a heighted risk of deprivation for Mr. Zakzouk.

Additionally, Mr. Zakzouk is subject to an immigration detention provision that "lack[s the] process" available under more protective schemes, such as Section 1226(a). In *Rodriguez Diaz v. Garland*, 53 F. 4th 1189 (9th Cir. 2022), the Ninth Circuit found due process satisfied in the prolonged detention context by procedural protections that were "subject to numerous levels of review, each offering [] the opportunity to be heard by a neutral decisionmaker." *Id.* at 1210. "These procedures ensured that the risk of erroneous deprivation would be 'relatively small.'" *Id.* By contrast, an individual detained under Section 1231(a)(6) has no statutory or regulatory entitlement to a bond hearing before an IJ whatsoever. Assuming Mr. Zakzouk would eventually become entitled to a bond hearing or habeas relief through prolonged detention, it would be cold comfort to him to be re-released after waiting six months or more in custody for the error to be corrected. The erroneous deprivation of liberty, along with the concomitant damage to his mental health and impact on his family, will have already taken place.

Taken to its logical extreme, the government's position would permit ICE to regularly re-detain individuals under Section 1231(a)(6), even if the re-detention occurred within days of release and without any material change in circumstances. ICE's detention decisions would then effectively be unreviewable by any neutral decisionmaker for at least six months, and even if the individual were released, ICE could repeat the process the next day. This is a recipe for arbitrary and erroneous deprivations of liberty. *See Zadvydas*, 533 U.S. at 692 ("The Constitution may well preclude granting 'an administrative body the unreviewable authority to make

determinations implicating fundamental rights.'") (quoting *Superintendent, Mass. Correctional Institute at Walpole v. Hill*, 472 U.S. 445 (1985)).

By contrast, allowing a neutral arbiter to review the facts would significantly reduce the risk of erroneous deprivation. The government's representations regarding their anticipated decision to re-detain Mr. Zakzouk highlight the need for such a hearing. ICE has not reopened removal proceedings to obtain an IJ order removing Mr. Zakzouk to Jordan in the alternative, and yet ICE has taken steps to facilitate his removal to that country. Such actions indicate that ICE may remove Mr. Zakzouk without reopening his proceedings, thus depriving him of the notice and opportunity to apply for CAT relief.

To the extent that the government complains of "hurdles to efficiently scheduling a hearing," ECF No. 14 at 24, solutions to docket management such as prosecutorial discretion, administrative closure, and termination of proceedings exist, but since January, the government has repudiated these reasonable measures in addition to firing over 100 immigration judges.[3] The government is less than candid in claiming that efficient scheduling is a priority under this administration. The government also cites "a need for prompt government action" may necessitate "quick action," and certainly, there may be situations that urgently require arrest, in which a prompt post-deprivation hearing is appropriate. But, absent evidence of urgent concerns—and there are none here, as ICE has not sought to effectuate Mr. Zakzouk's removal for nearly two decades and has thus far allotted about three months for him to "apply for travel documents for Saudi Arabia and Jordan" without seeking reopening for an IJ order allowing his removal to Jordan—a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has already been released. *See Guillermo M.R.*, *supra*, at *9. Further, ICE

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[3] Karina Nova and Juan Carlos Guerrero, *'Valid fear': Immigration judges, lawyers say they're being targeted by Trump administration*, ABC7 Eyewitness News (Aug. 18, 2025), *https://abc7.com/post/more-100-immigration-judges-fired-trumps-inauguration-white-house-targets-lawyers/17503922/*. *See also* Ximena Bustillo, *Inside one of the most understaffed immigration courts in the country*, NPR (Aug. 13, 2025), *https://www.npr.org/2025/08/13/nx-s1-5482883/trump-immigration-court-firings-chelmsford.*

has elected to proceed by notifying Mr. Zakzouk that he must return to apply for travel documents at his next check-in appointment, indicating that they did not fear he would flee or refuse to comply with the requirements of his release, even with knowledge of his likely detention. ICE's course of conduct demonstrates their lack of urgency, as does their stipulation to an extended briefing schedule as to this TRO/PI motion.

Additionally, immigration courts "routinely schedule within 14 days" statutorily required bond hearings, and the *Aleman Gonzalez* preliminary injunction requires bond hearings in a context not expressly contemplated under the relevant statutory scheme, yet IJs have been "successfully providing hearings pursuant to the court's order for several years." *Guillermo M.R.*, *supra*, at *9. This puts to rest the government's opposition based on how "[t]he INA does not provide for a pre-deprivation hearing" and that "[t]here is no administrative process in place for giving [a noncitizen] with a final order of removal a hearing resembling a bond hearing before an immigration judge." ECF No. 14 at 24–25.

B. Mr. Zakzouk will experience irreparable harm without this order.

The likelihood of irreparable harm in this case is high. "[T]he irreparable harms imposed on anyone subject to immigration detention (or other forms of imprisonment)" are self-evident. *See Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Absent a TRO/PI, Mr. Zakzouk will be detained and will not be entitled to challenge his re-detention before a neutral adjudicator for a minimum of six months—if he remains in the United States, as ICE appears to seek to remove him to Saudi Arabia or Jordan. Mr. Zakzouk has never been provided the opportunity to apply for relief from being removed to Jordan, and as asserted in his motion, "[i]ndividuals removed to third countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network," or have "faced severe torture at the hands of government agents." Further, detention may cause Mr. Zakzouk to lose his job, and he will be unable to care for his family. *See Guillermo M.R.*, *supra*, at *10.

"[T]he deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, contrary to the government's baseless assertions, these harms are *not* "speculative." *See* ECF No. 14 at 25–26.

C. The equities and public interest favor Mr. Zakzouk.

The government points to Mr. Zakzouk's "undisputed, extensive criminal history involving drugs, theft, resisting or obstructing law enforcement" as the primary reason why a TRO/PI is not "in the public interest," but Mr. Zakzouk's misconduct occurred *over two decades ago*. That criminal history could not be less relevant when Mr. Zakzouk has led an upstanding life for over 22 years. Further, Mr. Zakzouk is now the father to a "fourteen-year-old U.S. citizen daughter, who has been diagnosed with major depressive disorder and anxiety and relies heavily on her father to support her as an [LGBTQIA+] teenager." ECF No. 2 at 7–8. His re-detention would unequivocally damage her mental health and deprive her of her father's support.

The government additionally claims that Mr. Zakzouk "has not shown that the violation of any constitutional rights is likely to occur," ECF No. 14 at 27, but ICE's actions attempting to obtain travel documents for Jordan, a country to which he has not been ordered removed, indicates otherwise. So too do the numerous removals, lawsuits, and injunctions that have proliferated since this administration took office in January.

Conclusion

For the foregoing reasons, Mr. Zakzouk respectfully requests this Court grant his motion for a temporary restraining order directing the government not to re-detain him unless he is afforded notice and a hearing before an immigration judge on whether his re-detention is not indefinite and, further, whether it is justified by evidence that he is a danger to the community or a flight risk, and not remove him to any third country without first providing him with constitutionally-compliant procedures.

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Respectfully submitted,

/s/ Lina Baroudi

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