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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 R [REDACTED] K [REDACTED]

12
13 Petitioner,

14 vs.

15 JEREMY CASEY, in his official capacity
16 as Warden of the Imperial Regional
17 Detention Facility; et al.

18 Respondents.
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Case No.: 3:25-cv-01926-DMS-DEB

PETITIONER [REDACTED]
[REDACTED] S REPLY IN SUPPORT OF
HIS MOTION FOR (1)
TEMPORARY RESTRAINING
ORDER AND (2) ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION

Judicial Officer: Hon. Dana M. Sabraw
Courtroom number: 13A
Hearing Date/Time: August 6, 2025 at
2:30 p.m.

28 **PETITIONER'S REPLY ISO MOTION FOR TEMPORARY RESTRAINING**
ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

Case No. 3:25-cv-01926-DMS-DEB

1 **I. Preliminary Statement**

2 For the past seventeen years, Mr. [REDACTED] has lived and worked under an
3 Order of Supervision 1) because Respondents determined that he could not be
4 deported to Iran under the Convention Against Torture (“CAT”) and 2) because
5 “there is no significant likelihood of removal in the reasonably foreseeable future.”
6 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); [REDACTED] Decl. (Dkt. 2-2) ¶ 6. Those
7 facts were true each time Mr. [REDACTED] appeared for his annual check-in with ICE
8 under the Order of Supervision. [REDACTED] Decl. (Dkt. 2-2) ¶ 8. And those facts remain
9 true — and uncontested — today.

10 Respondents contend Mr. [REDACTED]’s re-detention is lawful under the
11 President’s recent instruction to the Secretary of State to “take all appropriate action
12 to facilitate additional international cooperation” in carrying out third-country
13 removals and a new ICE policy directing officials to “review [the cases of non-
14 detained non-citizens] to determine the viability of removal to a third country and
15 accordingly whether the alien should be re-detained.” Resp. (Dkt 12) at 4-5. But
16 neither the President’s executive order, nor ICE’s directive, mandate that individuals
17 be re-detained *before* their removal to a third country becomes viable. Detention is,
18 by definition, “arbitrary” and “indefinite” if its nature and duration are contingent
19 upon something Respondents might or might not try to do over an unspecified period
20 of time.

21 Crucially, even now, Respondents cannot represent that Mr. [REDACTED]’s removal
22 is viable. To the contrary, when ICE finally met with Mr. [REDACTED] nearly a month
23 after his arrest (and only *after* Respondents were on notice of this litigation), ICE
24 informed him that it has nowhere to send him and has, in fact, failed to find removal
25 options for over 80% of similarly situated Iranians. Second [REDACTED] Decl. ¶¶ 3-7. If
26 “significant likelihood” and “reasonably foreseeable” have any meaning, they must
27 mean better odds than rolling doubles. And under Respondents own regulations, re-

1 detention “to enforce a removal order” is not proper if removal is entirely
2 speculative. 8 C.F.R. § 241.4(l)(2)(iii).

3 More damning than what Mr. [REDACTED] knew at the time he filed his habeas
4 petition is what ICE told him after it got around to contacting him last week. Not
5 only is there a less than 1-in-5 chance ICE can find a country willing to accept Mr.
6 [REDACTED] ICE’s policy is to arrest non-citizens protected under the Convention
7 Against Torture and hold them for six months regardless of whether removal is
8 possible, and only then, after six months, to seek release authority from ICE
9 headquarters in Washington. At its core, Respondents’ position is that ICE can detain
10 individuals for six months on the pretext that it *might* find a third country to which it
11 *might* remove them, and if it does not, it will *possibly* release them, all while
12 reserving the right to re-arrest them upon release to endure the entire Kafka-esq
13 process again.

14 Mr. [REDACTED] is likely to prevail on the merits because such an arbitrary abuse
15 of ICE’s detention authority violates its own regulations, statutes, and fundamental
16 due process. And Respondents, for their part, do not even attempt to address the
17 authorities cited in Mr. [REDACTED]’s briefing or explain why this Court should break
18 new ground in its favor. Instead, Respondents repackage template arguments that
19 respond to claims Mr. [REDACTED] is not making.

20 Lest there be any doubt, Mr. [REDACTED] is making a single argument. His release
21 from detention is compelled because: 1) ICE has no authority to re-detain an
22 individual who has been released on an Order of Supervision unless doing so is
23 “appropriate to *enforce* a removal order” 8 C.F.R. § 241.4(l)(2)(iii); 2) for such
24 detention to be “appropriate,” there must be a “significant likelihood of removal in
25 the reasonably foreseeable future,” *Zadvaydas*, 533 U.S. at 701; and 3) to lawfully
26 enforce such a removal order, ICE must comply with its own procedural regulations.
27 *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954).

1 Respondents do not dispute these basic principles. Instead, they openly flout
2 them and twist *Zadvydas*' default presumption that more than six-months of
3 detention is presumptively unreasonable into *the reason* Mr. [REDACTED]'s re-detention
4 for at least six months is proper. Under the purported cover of *Zadvydas*, ICE intends
5 to keep Mr. [REDACTED] detained for as long as possible even though it currently has no
6 ability to remove him and no indication of an imminent ability to remove him.

7 The arbitrariness and illegality of Mr. [REDACTED]'s detention is indisputable. This
8 Court should grant Mr. [REDACTED]'s Motion for Temporary Restraining Order and
9 Order to Show Cause re Preliminary Injunction (Dkt. 2). As set forth in the
10 Memorandum of Law in support of the Motion (Dkt. 2-1), Mr. [REDACTED] is certain to
11 prevail on the merits, he will suffer irreparable harm if injunctive relief is denied, and
12 the public interest strongly favors his immediate release.

13 **II. Factual developments regarding Mr. [REDACTED]'s detention**

14 **A. Executive Order 14165 and subsequent ICE Directive**

15 Respondents point to Executive Order 14165, issued on January 20, 2025, and
16 a subsequent ICE directive as the moving force behind Mr. [REDACTED]'s sudden
17 detention despite no imminent potential for removal. Together, Respondents say,
18 these documents "encourag[e] the increased use of third-country removals against
19 individuals granted CAT protection" and instruct ICE officers that they "should
20 review the case to determine the viability of removal to a third country and
21 accordingly whether the alien should be re-detained." Resp. (Dkt 12) at 5.
22 Respondents specify — for the first time since detaining Mr. [REDACTED] nearly a month
23 ago — that, pursuant to these policies, the reason for Mr. [REDACTED]'s re-detention is
24 solely "to execute the removal order by resettling [him] in a third country." *Id.* at 13.
25 Nowhere, however, do Respondents identify any third country or suggest any
26 prospect of identifying a third country.

1 **B. July 30 interaction with ICE officer Gonzalez**

2 ICE officer Gonzalez spoke with Mr. [REDACTED] on July 30, the day Mr. [REDACTED]
3 filed his habeas petition and Motion. Second [REDACTED] Decl. ¶ 2. During their brief
4 meeting, Officer Gonzalez asked Mr. [REDACTED] about his background and informed
5 him that ICE has been unable to find third-country placement for over 80% of
6 Iranians with CAT protection. *Id.* ¶¶ 3, 7. Officer Gonzalez also advised that ICE
7 intends to detain Mr. [REDACTED] for 90-days while it tries to find a country that will take
8 him and that, if unsuccessful, ICE will detain him for another 90 days. *Id.* ¶¶ 4-6. At
9 that point, if still unsuccessful, ICE's field office can request authority to release
10 from ICE headquarters in Washington, D.C., which has generally not been eager to
11 grant release requests. *Id.* ¶ 5. Respondents brief confirms this conversation, stating
12 Officer Gonzalez "verbally described the entire process to" Mr. [REDACTED], "obtained
13 information . . . for the purpose of obtaining travel documents . . . and informed [Mr.
14 [REDACTED] that ICE is not seeking to remove him to Iran." Resp. (Dkt. 12) at 2.

15 **III. Argument**

16 **A. Respondents do not dispute that they violated their own regulations.**

17 Respondents failed to comply with three discrete safeguards their own
18 regulations require: 1) provide the non-citizen "noti[ce] of the reasons for
19 revocation"; 2) provide the non-citizen "an initial informal interview promptly after
20 his or her return to Service custody"; and 3) "afford the [non-citizen] an opportunity
21 to respond to the reasons for revocation." 8 C.F.R. § 241.4(l)(1); [REDACTED] Mem. (Dkt.
22 2-1) at 9-12. Respondents do not address *any* of these failures. *See* Resp. (Dkt. 12) at
23 8-14. Their only contention even remotely related to them is the argument Mr.
24 [REDACTED] was not entitled to notice "prior" to revocation of his Order of Supervision.
25 *Id.* at 2, 12. Prior notice, however, is not Mr. [REDACTED]'s argument. As the omissions
26 in Respondents brief confirm, Respondents violated — and continue to violate — all
27 three requirements of their own regulations.

1 First, Mr. [REDACTED] has not received proper notice “of the reasons for
2 revocation,” including the specific basis for revocation and the “specific . . .
3 circumstances to support the[] assertions.” *Perez-Escobar v. Moniz*, No. 25-cv-
4 11781-PBS, 2025 WL 2084102 (D. Mass. July 24, 2025); [REDACTED] Memo. (Dkt. 2-1)
5 at 10. Respondents do not address this omission or attempt to explain themselves.
6 Instead, they say, “Petitioner and his counsel are [] *well aware* of the reason for
7 Petitioner’s re-detention, namely to execute the removal order by resettling [him] in a
8 third country.” Resp. (Dkt. 12) at 13 (emphasis added).

9 Contrary to Respondents’ representation, until counsel received a copy of their
10 brief over the weekend, Petitioner and his counsel could only speculate as to why
11 Mr. [REDACTED]’s release was suddenly revoked after almost 20 years. What is more,
12 even now, Respondents fail to explain their authority, citing only in passing the
13 provision of § 241.4(l)(2) that authorizes re-detention when “appropriate to enforce a
14 removal order.” Resp. (Dkt. 12) at 8. Even with such an eleventh-hour rationale in
15 this Court, though, Respondents still provide no specifics as to how they are
16 “enforcing” the order of removal, because as Respondents themselves recognize, Mr.
17 [REDACTED] does not have travel documents. Nor do Respondents contend that they have
18 anywhere to send him. Second [REDACTED] Decl. ¶¶ 3-8. Nowhere do Respondents
19 explain how it is “appropriate” to detain Mr. [REDACTED] pending something they might
20 or might not try to do in the indefinite future.

21 Second, Respondents have still not provided Mr. [REDACTED] with the “initial
22 informal interview” the regulations require “promptly” upon re-detention.
23 § 241.4(l)(1). Incredibly, Respondents note that the ICE directive under which they
24 detained Mr. [REDACTED] instructs them to provide this interview *within two days of re-*
25 *detention*. Resp. (Dkt. 12) at 5. On July 30 — some three weeks after Mr. [REDACTED]
26 was detained and only after he filed suit in this Court — ICE finally dispatched
27 Officer Gonzalez to speak with Mr. [REDACTED]. See Second [REDACTED] Decl.; see also

1 Resp. (Dkt. 12) at 2, 7, 12-14. Far from conducting the § 241.4 interview, Officer
2 Gonzalez merely asked Mr. [REDACTED] about his background and informed him that
3 ICE intended to detain him until it could find a third county for removal. Second
4 [REDACTED] Decl. ¶¶ 3-8. Respondents acknowledge Officer Gonzalez's interaction with
5 Mr. [REDACTED] but they do not offer any explanation for how it satisfied § 241.4. Resp.
6 (Dkt. 12) at 2, 7, 12-14.

7 Third, Respondents have not given Mr. [REDACTED] "an opportunity to respond to
8 the reasons for revocation." § 241.4(l)(1). The minimum due process requires is an
9 "opportunity to be heard at a meaningful time and in a meaningful manner" in which
10 the non-citizen can "present pertinent information." *Villa-Anguina v. Holder*, 727
11 F.3d 873, 881 (9th Cir. 2013). ICE's own regulations require this opportunity to
12 happen "promptly," which again, ICE's directive characterizes as *within two days* of
13 re-detention. § 241.4(l)(1); Resp. (Dkt. 12) at 5. Nowhere in their brief, not even
14 while explaining the conversation with Officer Gonzalez, do Respondents assert Mr.
15 [REDACTED] has had an opportunity to respond to the reasons for revocation. After having
16 spent nearly a month in ICE detention, Mr. [REDACTED] has still had no opportunity to
17 respond to the reasons for revocation.

18 **B. Mr. [REDACTED]'s detention violates the Supreme Court's clear**
19 **directive that immigration detainees may only be held for "a period**
20 **reasonably necessary to bring about the alien's removal."**

21 In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) (ICE's
22 authority for holding Mr. [REDACTED] "limits an alien's . . . detention to a period
23 reasonably necessary to bring about that alien's removal. . . . It does not permit
24 indefinite detention." 533 U.S. at 689. Where "there is no significant likelihood of
25 removal in the reasonably foreseeable future," detention is unlawful. *Id.*

26 Respondents invert *Zadvydas*' default presumption that more than six-months
27 of detention following an order of removal is presumptively unreasonable into *the*

1 reason Mr. [REDACTED]'s re-detention is proper. Resp. (Dkt. 12) at 12-13. *Zadvydas* held,
2 however, that six-months of detention with no significant likelihood of removal in
3 the reasonably foreseeable future is a presumptive ceiling, not a floor. And indefinite,
4 arbitrary detention past an initial 90-day removal period (which expired long ago in
5 Mr. [REDACTED]'s case) is not reasonable if there is no significant likelihood of removal
6 in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

7 Respondents are not entitled to a six-month judicial-review-free detention
8 period each time they re-arrest an individual. To hold otherwise would be to create a
9 truly absurd and Kafka-esq process of indefinite detention, under which Respondents
10 may hold an individual for six months, release them for a day, and then re-detain
11 them for another six months. *See also Sied v. Nielsen*, No. 17-cv-06785, 2018 WL
12 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (noting courts around the country “have
13 held that the six-month period does not reset when the government detains an alien . .
14 . releases him from detention, and then re-detains him again.”). Not only would that
15 be precisely the kind of “indefinite” detention *Zadvydas* condemned, but it would
16 also violate the core principle that the law should not be interpreted to “lead to
17 injustice, oppression, or an absurd consequence.” *United States v. Kirby*, 74 U.S.
18 482, 486 (1868).

19 As Officer Gonzalez explained to Mr. [REDACTED], ICE apparently intends to keep
20 him for up to 180 days although it has nowhere to send him and cannot find third-
21 country removal options for 80% of Iranians protected by CAT. Second [REDACTED]
22 Decl. ¶¶ 3-8. Respondents’ brief echoes this, noting “detention is presumptively
23 reasonable up to six months . . . ICE has lawfully re-detained [Mr. [REDACTED]] . . . and
24 that re-detention occurred less than one month ago.” Resp. (Dkt. 12) at 13. In other
25 words, using the purported cover of the six-month rule, ICE intends to keep Mr.
26 [REDACTED] detained for as long as possible even though it currently has no ability to
27 remove him, no indication of an imminent ability to remove him, and affirmative

1 knowledge that it will never be able to remove some 80% of similarly situated
2 individuals. Detaining Mr. [REDACTED] in these conditions is the definition of arbitrary
3 detention that violates § 1231 and due process.

4 Respondents' tortured reading of *Zadvydas* conflicts with their own
5 regulations. The Supreme Court set down *Zadvydas*' six-month rule "for the sake of
6 uniform administration in the federal courts." *Zadvydas*, 533 U.S. at 701. As one
7 federal district court put it, the rule is simply "a tool to 'guide lower court[s].'"
8 *Munoz-Saucedo v. Pittman*, No. 25-2258, 2025 WL 1750346, at *6 (D.N.J. June 24,
9 2025) (alteration in original). "To hold otherwise would condone detention in cases
10 where removal is not reasonably foreseeable or even functionally impossible, as long
11 as it did not exceed six months." *Id.* That is exactly what Respondents claim an
12 entitlement to do here.

13 Additionally, when a non-citizen is released due to no significant likelihood of
14 removal, ICE regulations only permit re-detention when there are "changed
15 circumstances" making removal imminent. 8 C.F.R. § 241.13(i). That is, in normal
16 circumstances, ICE's own reading of *Zadvydas* does not give it carte blanche to
17 detain non-citizens when removal is not likely. And Respondents have pointed to no
18 "changed circumstances" here other than an executive order and ICE directive that
19 generally seek to rally ICE to try harder in pursuing third-country removals.

20 **C. Respondents' contention that Mr. [REDACTED] will not suffer**
21 **irreparable harm because he was previously imprisoned is absurd.**

22 While detained, Mr. [REDACTED]'s business continues to deteriorate, and he is
23 unable to care for his elderly mother, who recently suffered a stroke and lives with
24 and is cared for by Mr. [REDACTED]. Respondents do not challenge that these are, in fact,
25 significant harms inflicted upon Mr. [REDACTED] and his family due to his detention.
26 Instead, Respondents suggest this Court should entirely discount such harms, arguing
27 that, though "Petitioner . . . contends that detention adversely impacts his ability to

1 work and care for his mother,” such harms do not matter because they are “the same
2 hardships that he suffered when he served time for his various criminal offenses.
3 Resp. (Dkt. 12) at 15. Not only do Respondents fail to cite authority for their
4 proposition that endured past harms justifies the imposition of current harms, their
5 position defies common sense. Simply because Mr. [REDACTED] was incarcerated years
6 ago does not mean he suffers no irreparable harm from incarceration now.

7 **IV. Conclusion**

8 Mr. [REDACTED] is likely to prevail on the merits, and as set forth in the
9 Memorandum of Law in support of his Motion (Dkt. 2-1), he will suffer irreparable
10 harm if injunctive relief is denied, and the public interest strongly favors his
11 immediate release. This Court should grant his Motion without delay.

12
13 **STEPTOE LLP**

Dated: August 4, 2025

/s/Michelle S. Kallen

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INDEX OF EXHIBITS

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Second Declaration of 	1