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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Farhad Navaie, Petitioner, v. David R. Rivas, *et al.*, Respondents.	No. CV-25-03002-PHX-MTL (MTM) **RESPONSE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Respondents David R. Rivas, Warden, San Luis Regional Detention Center; Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs Enforcement, Kristi Noem, Secretary of Department of Homeland Security (DHS), and Pam Bondi, Attorney General of the United States (Respondents), through undersigned counsel, respond in opposition to Petitioner's Motion for Preliminary Injunction (PI) and Temporary Restraining Order (TRO). Doc. 3. Petitioner Farhad Navaie is a detainee with a significant criminal history subject to a valid final order of removal. The Court should deny Petitioner's request because ICE is actively working on obtaining travel documents. Petitioner cannot establish a likelihood of success on the merits, irreparable harm, and the public interest and balance of equities favors the government. This response is supported

by the following Memorandum of Points and Authorities and attached declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background.

Petitioner is a citizen and national of the Islamic Republic of Iran. *See* Declaration of Ramon Meraz, Deportation Officer for DHS, attached as Exhibit A, at ¶ 4. He was born on [redacted] in Iran. *Id.* Petitioner was admitted to the United States at the Los Angeles International Airport as a student (FI Visa) on June 22, 1997. *Id.* at ¶ 5. He was served with a Notice to Appear (NTA) before an Immigration Judge (IJ) in removal proceedings upon his custody transfer from state prison to the former Immigration and Nationality Service (INS). *Id.* at ¶ 6. He was ordered removed to Iran on June 12, 2001, after his application for withholding of removal was denied. *Id.* at ¶ 7. He did not appeal the IJ's decision. *Id.* Petitioner is therefore subject to a valid executable final administrative order of removal. *Id.* at ¶ 7. On October 20, 1998, Petitioner was convicted of Battery, a misdemeanor, and sentence to three years of probation. *Id.* at ¶ 8.

Petitioner has a significant criminal history. On October 20, 1998, he was convicted of Battery, a misdemeanor, and sentenced to three years of probation. *Id.* at ¶ 8. On March 19, 1999, he was convicted of First-Degree Robbery, a felony, and sentenced to three years in prison (as Petitioner notes in his Petition, this particular conviction constituted an aggravated felony). *Id.* at ¶ 9. On November 24, 2009, he was convicted of Theft, a misdemeanor, and Temper with Vehicle, also a misdemeanor, and sentenced to three years of probation. *Id.* at ¶ 10. On January 9, 2020, he was convicted of Unreasonable Noise, a misdemeanor, and sentenced to three years of probation. *Id.* at ¶ 11. On March 15, 2022, he was convicted of Possessing Narcotics, a controlled substance, a misdemeanor, and paraphernalia, also a misdemeanor, and sentenced to one year of probation. *Id.* at ¶ 12. In August of 2002, he was released on an order of supervision. *Id.* at ¶ 13. 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 ¶ 14.

Recently, Petitioner did not fully comply with his order of supervision. Petitioner

did not check into the Compliance Assistance Reporting Terminal (CART), which is a kiosk-based system that allows for aliens to check in with ICE via an automated kiosk, as scheduled on March 12, 2025. *Id.* at ¶ 15. As a result, CART populated an alert that the respondent had absconded from checking in with ICE. *Id.* He was arrested on March 13, 2025, when he reported to ICE, Enforcement and Removal Operations (ERO), Santa Ana sub-office. *Id.* at ¶ 16. Petitioner was booked into ICE custody first at the Otay Mesa Detention Center. *Id.* at ¶ 17. On July 17, 2025, Petitioner was transferred to the San Luis Regional Detention Center where he remains. *Id.* Records indicate that Petitioner had a bond hearing before an Immigration Judge on July 25, 2025, at the Otay Mesa Immigration Court. *Id.* at ¶ 19. The Immigration Court issued an Order on July 25, 2025, noting, "The court will grant respondent's request to withdraw the bond at this time." *Id.* at ¶ 20.

As to efforts effectuating removal, on or about April 17, 2025, ERO started the process of preparing a travel document request by obtaining a copy of the original removal order. *Id.* at ¶ 21. On May 14, 2025, ERO submitted a travel document request packet to the Detention and Deportation Officer (DDO) assigned to Iranian cases within ERO Headquarters, Removal and International Operations (RIO) for review. *Id.* at ¶ 22. On June 26, 2025, ERO inquired with RIO as to the status of the Petitioner's travel documents and no response was received. *Id.* at ¶ 23. On July 8, 2025, ERO San Diego confirmed from RIO that ERO can conduct removals to Iran. *Id.* at ¶ 24. On September 10, 2025, ERO sent another inquiry to RIO as to the status of the Petitioner's travel documents. *Id.* at ¶ 25.

In his request for a PI/TRO, Petitioner asserts that "ICE has classified Iran as uncooperative with its efforts to repatriate Iranian citizens who have been ordered removed," and asserts that he has not been afforded a bond hearing. Doc. 3 at 1. He claims that his "continued, indefinite detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no reasonable likelihood that he can be removed to Iran in the reasonably foreseeable future." *Id.* at 2. Respondents deny these allegations, and assert that even assuming Petitioner met his burden, the drastic remedy of a PI/TRO should be denied because the government can rebut the presumption that his

removal is not likely in the immediately foreseeable future, since ICE is currently working on his case for removal, as recently as today, September 10, and actively trying to obtain Iranian travel documents. Additionally, Petitioner's claims that he was not afforded a bond hearing is patently false. Respondent appeared before Otay Mesa Immigration Court on July 25, 2025, and withdraw his request for a bond.[1] Ex. A at ¶¶ 19-20.

II. Temporary Restraining Orders and Preliminary Injunctions Standard.

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

[1] Respondents will produce a copy of the IJ's July 25, 2025, Order, and any associated recordings of that hearing in its response to Petitioner's Amended Motion for Limited Discovery. Doc. 7.

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 carries a "heavy" burden. *Id.*

A preliminary injunction can take two forms. A "prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied "unless extreme or very serious damage will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

III. ARGUMENT.

A. Standard Governing Detention of Aliens Pending Removal.

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 (6). Under this section, ICE may detain an alien for a "reasonable time" necessary to effectuate the alien's deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not authorized. *Id.*

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court defined six months as a presumptively reasonable period of detention. *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. Here, Petitioner became subject to a final order of removal on February 13, 2024, and thus his detention is governed by 8 U.S.C. § 1231 and *Zadvydas*. *See* 8 U.S.C. 1231(a)(1)(B); *Zadvydas*, 533 U.S. at 688-89.

B. Petitioner Has Not Met His Burden to Establish There Is No Substantial Likelihood of Removal in the Reasonably Foreseeable Future.

Petitioner has the burden to show that his removal is not likely 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 substantially likely 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 removal is likely.

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)(6), but an alien is not entitled to release after six months 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 substantial 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 petitioner 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 petitioner must then provide good reason to believe that no significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

Petitioner has not met his burden. He provides conclusory assertions that "ICE has classified Iran as uncooperative with its efforts to repatriate Iranian citizens who have been ordered removed." Doc. 3 at 1. As of today, September 10, 2025, Petitioner has been detained 181 days, or just over the six-month reasonable detention mark as outlined in *Zadvydas* (not entitling release after six months). *Zadvydas*, 533 U.S. at 701. Ex. A at ¶ 17.

Even if Petitioner had met his burden showing that his removal is not likely in the reasonably foreseeable future, the Government rebuts that presumption with evidence showing that recent developments indicate that "there is a significant likelihood [ICE] will obtain Petitioner's travel documents to Iran and effectuate his removal. Ex. A at ¶ 26. Since he has been detained since March 13, 2025, ERO started the process of preparing a travel document request by obtaining a copy of the original removal order. *Id.* at ¶ 21. On May 14, 2025, ERO submitted a travel document request packet to the Detention and Deportation Officer (DDO) assigned to Iranian cases within ERO Headquarters, Removal and International Operations (RIO) for review. *Id.* at ¶ 22. On June 26, 2025, ERO inquired with RIO as to the status of the Petitioner's travel documents and no response was received. *Id.* at ¶ 23. On July 8, 2025, ERO San Diego confirmed from RIO that ERO can conduct

removals to Iran. *Id.* at ¶ 24. On September 10, 2025, ERO sent another inquiry to RIO as to the status of the Petitioner's travel documents. *Id.* at ¶ 25.

Uncertainty as to Petitioner's exact removal date does not warrant his release. *See Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008) (alien detained for more than three years did not mean that removal was no longer "reasonably foreseeable"). Based on the foregoing, Petitioner's continued detention is not indefinite and remains both authorized and constitutional.

C. Petitioner was afforded a bond hearing.

Petitioner asserts that "his detention is illegal because he has not been afforded a bond hearing before a neutral decision, in violation of the Due Process Clause." Doc. 3 at 1. This is untrue. On July 25, 2025, he appeared before the Otay Mesa Immigration and withdraw his request for bond at that time. Ex. A at ¶ 19-20. As such, this is a moot issue.

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,* 556 U.S. at 433 (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 habeas petition. Petitioner cannot meet his burden relying on the sole assertion that "ICE has classified Iran as uncooperative with its efforts to repatriate Iranian citizens who have been ordered removed." Doc. 3 at 1. Regardless, the government has rebutted that presumption through ICE's recent actions starting the process of preparing a travel document request on April 17, 2025, submitting a travel document request packet to

the DDO assigned to Iranian cases on May 14, 2025, inquiring into the status on June 26, 2025, confirming the status of removals on July 8, 2025, and following up as recently as today, September 10, 2025, regarding the status of Petitioner's travel documents. Ex. A at ¶¶ 21-25. DO Meraz stated that in his experience, there is a "significant likelihood [ICE] will obtain Petitioner's travel documents to Iran and effectuate his removal. *Id.* at ¶ 26. Additionally, Petitioner claims that he is neither a danger to the community nor a flight risk, asserting that he checked in regularly with ICE officials. Doc. 3 at 2. To the contrary, Petitioner did not check into the Compliance Assistance Reporting Terminal (CART), which is a kiosk-based system that allows for aliens to check in with ICE via an automated kiosk, as scheduled on March 12, 2025. Ex. A at ¶ 15. As a result, CART populated an alert that the respondent had absconded from checking in with ICE. *Id.* He was arrested on March 13, 2025, when he reported to ICE, Enforcement and Removal Operations (ERO), Santa Ana sub-office. *Id.* at ¶ 16. 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); s*ee also* 8 C.F.R. § 241.5(a); *Id.* at ¶ 14.

Therefore, Petitioner is unlikely to succeed on the merits of his habeas claim and is not entitled to injunctive relief. For these reasons, 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. 3 at 2. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. It is undisputed that Petitioner is subject to a valid order of removal. Additionally, he is one-day over the presumptively reasonable detention six-month period, and actions are being taken to effectuate his removal. Ex. A at ¶ 17. He withdrew his request for a bond. *Id.* at ¶ 20. 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 is subject to a final order of removal, and ICE is actively effectuating his removal, as discussed above. The public interest lies in keeping Petitioner detained to effectuate removal which is the undergirding statutory purpose of 8 U.S.C. § 1231.

V. CONCLUSION.

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

Respectfully submitted on September 10, 2025.

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