

JON M. SANDS
Federal Public Defender
KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
keith_hilzendeger@fd.org
Attorneys for Petitioner Navaie

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Farhad Navaie,

Petitioner,

vs.

David R. Rivas, Warden, et al.,

Respondents.

No. 2:25-cv-3002-PHX-MTL (MTM)

**Reply in Support of Motion for a
Preliminary Injunction and a Temporary
Restraining Order**

In the first ground for relief set forth in his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Mr. Navaie contends that his detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no significant likelihood that he will be removed to Iran in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Mr. Navaie cannot obtain travel documents to allow him to return to Iran, his country of citizenship, because Iran does not cooperate with ICE's efforts to obtain such documents and because ICE does not have the particular documents that the Iranian government requires to issue travel documents. Respondents have further produced evidence that they have known since 2001 that they cannot obtain travel documents for Mr. Navaie. Consistent with that knowledge, they have made no actual effort to rebut the evidence that Mr. Navaie has advanced to support this claim. This Court should therefore grant Mr. Navaie's request for a preliminary injunction and, under Fed. R. Civ. P. 65(a), also grant him relief on the first ground in his petition.

Background

(To the extent this background conflicts with the facts as set forth in the petition, Mr. Navaie respectfully corrects them here based on the information that respondents provided pursuant to the Court's order granting Mr. Navaie's discovery request.)

Mr. Navaie was born in 1975 in Tehran, Iran. (DHS-23)¹ His mother became a naturalized U.S. citizen on September 4, 1996. (DHS-516) On June 22, 1997, Mr. Navaie was admitted to the United States under an F-11 visa, which granted him permanent resident status as an adult relative of a U.S. citizen who was under the age of 21. (DHS-23) On April 2, 1999, Mr. Navaie was convicted in the Los Angeles County Superior Court of one count of first-degree residential robbery, in violation of Cal. Penal Code § 211, and sentenced to three years in state prison.

(DHS-25) As Mr. Navaie has acknowledged, § 211 constitutes an aggravated felony. (Dkt. #1 at 2 ¶ 4 (citing *United States v. Gonzalez*, 429 F.3d 1252, 1254 (9th Cir. 2005))) On January 11, 2001, while he was serving his sentence in a California state prison, he was served with a notice to appear and charged with being removable following a conviction for an aggravated felony. (DHS-20 to DHS-21)

According to Mr. Navaie's asylum application, he was released from California state prison on January 13, 2001, and transferred to the Eloy Detention Center in Eloy, Arizona, from where he filed his asylum application two and a half months later. (DHS-33) On June 12, 2001, an immigration judge ordered Mr. Navaie removed to Iran and denied his application for withholding of removal, made as part of his asylum application. (DHS-54) Mr. Navaie did not appeal this decision to the Board of Immigration Appeals. (DHS-54) It accordingly became final on July 12, 2001, when the time for doing so expired. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1003.38(b) (2025).

¹ Along with this document, Mr. Aguilar is filing for the record the discovery provided by respondents pursuant to this Court's order of September 2, 2025, will be submitted separately under seal. These documents, consisting of 556 pages of documents and a placeholder page for an audio file, will be submitted as a single pdf file. An index will be available for the public docket. The documents will be referenced here as "DHS-xxx," where xxx is the pdf page of the filing.

1 On June 20, 2001, a deportation officer at the Eloy Detention Center asked the Iranian
2 Interests Section of the Pakistani Embassy² in Washington, DC to provide travel documents for
3 Mr. Navaie on an emergency basis. (DHS-57) A copy of his Iranian passport and a translation
4 from the Farsi-language version were attached to the request, along with other documents that
5 are only in Farsi. (DHS-58 to DHS-73) On July 16, 2001, apparently following a conversation
6 between the deportation officer and an officer of the Iranian Interests Section, the deportation
7 officer forwarded by FedEx a version of Mr. Navaie's Iranian birth certificate to the Iranian
8 Interests Section. Respondents' documentation of this event is unclear—the typewritten portion
9 of a cover letter indicates that "the original birth certificate" was included in the submission, but
10 a handwritten notation on the copy of the letter that respondents provided suggests that a copy of
11 the certificate was sent by FedEx overnight delivery to the Iranian Interests Section, and was
12 received on July 18, 2001. (DHS-77) In any event, on July 19, 2001, the Iranian Interests Section
13 responded that it could not issue a travel document without originals of both the passport and the
14 birth certificate. (DHS-75) On October 2, 2001, INS formally notified Mr. Navaie that it would
15 not release him from detention. (DHS-79) Ten days later, contrary to the response from the
16 Iranian Interests Section, INS told Mr. Navaie that it was "pending receipt of your travel
17 document and you will be removed in the reasonably foreseeable future." (DHS-85)

18 On February 13, 2002, this Court docketed a *pro se* petition for a writ of habeas corpus
19 under 28 U.S.C. § 2241. *Navaie v. Ashcroft*, No. 2:02-cv-265-PHX-SMM (DKD). In his petition,
20 he alleged that his detention was illegal because he had been detained since June 12, 2001, when
21 he was ordered removed from the United States, but had become indefinite because there was no
22 significant likelihood of removal in the reasonably foreseeable future. (DHS-98) He contended
23 that the Supreme Court's then-recent decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001),
24 supported his claim. (DHS-102) While this petition was pending, the Iranian Interests Section

25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
5510
5511
5512
5513
5514
5515
5516
5517
5518
5519
5520
5521
5522
5523
5524
5525
5526
5527
5528
5529
5530
5531
5532
5533
5534
5535
5536
5537
5538
5539
55310
55311
55312
55313
55314
55315
55316
55317
55318
55319
55320
55321
55322
55323
55324
55325
55326
55327
55328
55329
55330
55331
55332
55333
55334
55335
55336
55337
55338
55339
55340
55341
55342
55343
55344
55345
55346
55347
55348
55349
55350
55351
55352
55353
55354
55355
55356
55357
55358
55359
55360
55361
55362
55363
55364
55365
55366
55367
55368
55369
55370
55371
55372
55373
55374
55375
55376
55377
55378
55379
55380
55381
55382
55383
55384
55385
55386
55387
55388
55389
55390
55391
55392
55393
55394
55395
55396
55397
55398
55399
553100
553101
553102
553103
553104
553105
553106
553107
553108
553109
553110
553111
553112
553113
553114
553115
553116
553117
553118
553119
553120
553121
553122
553123
553124
553125
553126
553127
553128
553129
553130
553131
553132
553133
553134
553135
553136
553137
553138
553139
553140
553141
553142
553143
553144
553145
553146
553147
553148
553149
553150
553151
553152
553153
553154
553155
553156
553157
553158
553159
553160
553161
553162
553163
553164
553165
553166
553167
553168
553169
553170
553171
553172
553173
553174
553175
553176
553177
553178
553179
553180
553181
553182
553183
553184
553185
553186
553187
553188
553189
553190
553191
553192
553193
553194
553195
553196
553197
553198
553199
553200
553201
553202
553203
553204
553205
553206
553207
553208
553209
553210
553211
553212
553213
553214
553215
553216
553217
553218
553219
553220
553221
553222
553223
553224
553225
553226
553227
553228
553229
553230
553231
553232
553233
553234
553235
553236
553237
553238
553239
553240
553241
553242
553243
553244
553245
553246
553247
553248
553249
553250
553251
553252
553253
553254
553255
553256
553257
553258
553259
553260
553261
553262
553263
553264
553265
553266
553267
553268
553269
553270
553271
553272
553273
553274
553275
553276
553277
553278
553279
553280
553281
553282
553283
553284
553285
553286
553287
553288
553289
553290
553291
553292
553293
553294
553295
553296
553297
553298
553299
553300
553301
553302
553303
553304
553305
553306
553307
553308
553309
553310
553311
553312
553313
553314
553315
553316
553317
553318
553319
553320
553321
553322
553323
553324
553325
553326
553327
553328
553329
553330
553331
553332
553333
553334
553335
553336
553337
553338
553339
553340
553341
553342
553343
553344
553345
553346
553347
553348
553349
553350
553351
553352
553353
553354
553355
553356
553357
553358
553359
553360
553361
553362
553363
553364
553365
553366
553367
553368
553369
553370
553371
553372
553373
553374
553375
553376
553377
553378
553379
553380
553381
553382
553383
553384
553385
553386
553387
553388
553389
553390
553391
553392
553393
553394
553395
553396
553397
553398
553399
553400
553401
553402
553403
553404
553405
553406
553407
553408
553409
553410
553411
553412
553413
553414
553415
553416
553417
553418
553419
553420
553421
553422
553423
553424
553425
553426
553427
553428
553429
553430
553431
553432
553433
553434
553435
553436
553437
553438
553439
553440
553441
553442
553443
553444
553445
553446
553447
553448
553449
553450
553451
553452
553453
553454
553455
553456
553457
553458
553459
553460
553461
553462
553463
553464
553465
553466
553467
553468
553469
553470
553471
553472
553473
553474
553475
553476
553477
553478
553479
553480
553481
553482
553483
553484
553485
553486
553487
553488
553489
553490
553491
553492
553493
553494
553495
553496
553497
553498
553499
553500
553501
553502
553503
553504
553505
553506
553507
553508
553509
553510
553511
553512
553513
553514
553515
553516
553517
553518
553519
553520
553521
553522
553523
553524
553525
553526
553527
553528
553529
553530
553531
553532
553533
553534
553535
553536
553537
553538
553539
5535310
5535311
5535312
5535313
5535314
5535315
5535316
5535317
5535318
5535319
5535320
5535321
5535322
5535323
5535324
5535325
5535326
5535327
5535328
5535329
5535330
5535331
5535332
5535333
5535334
5535335
5535336
5535337
5535338
5535339
55353310
55353311
55353312
55353313
55353314
55353315
55353316
55353317
55353318
55353319
55353320
55353321
55353322
55353323
55353324
55353325
55353326
55353327
55353328
55353329
55353330
55353331
55353332
55353333
55353334
55353335
55353336
55353337
55353338
55353339
553533310
553533311
553533312
553533313
553533314
553533315
553533316
553533317
553533318
553533319
553533320
553533321
553533322
553533323
553533324
553533325
553533326
553533327
553533328
553533329
553533330
553533331
553533332
553533333
553533334
553533335
553533336
553533337
553533338
553533339
553533340
553533341
553533342
553533343
553533344
553533345
553533346
553533347
553533348
553533349
553533350
553533351
553533352
553533353
553533354
553533355
553533356
553533357
553533358
553533359
553533360
553533361
553533362
553533363
553533364
553533365
553533366
553533367
553533368
553533369
553533370
553533371
553533372
553533373
553533374
553533375
553533376
553533377
553533378
553533379
553533380
553533381
553533382
553533383
553533384
553533385
553533386
553533387
553533388
553533389
553533390
553533391
553533392
553533393
553533394
553533395
553533396
553533397
553533398
553533399
5535333100
5535333101
5535333102
5535333103
5535333104
5535333105
5535333106
5535333107
5535333108
5535333109
5535333110
5535333111
5535333112
5535333113
5535333114
5535333115
5535333116
5535333117
5535333118
5535333119
5535333120
5535333121
5535333122
5535333123
5535333124
5535333125
5535333126
5535333127
5535333128
5535333129
5535333130
5535333131
5535333132
5535333133
5535333134
5535333135
5535333136
5535333137
5535333138
5535333139
5535333140
5535333141
5535333142
5535333143
5535333144
5535333145
5535333146
5535333147
5535333148
5535333149
5535333150
5535333151
5535333152
5535333153
5535333154
5535333155
5535333156
5535333157
5535333158
5535333159
5535333160
5535333161
5535333162
5535333163
5535333164
5535333165
5535333166
5535333167
5535333168
5535333169
5535333170
5535333171
5535333172
5535333173
5535333174
5535333175
5535333176
5535333177
5535333178
5535333179
5535333180
5535333181
5535333182
5535333183
5535333184
5535333185
5535333186
5535333187
5535333188
5535333189
5535333190
5535333191
5535333192
5535333193
5535333194
5535333195
5535333196
5535333197
5535333198
5535333199
5535333200
5535333201
5535333202
5535333203
5535333204
5535333205
5535333206
5535333207
5535333208
5535333209
5535333210
5535333211
5535333212
5535333213
5535333214
5535333215
5535333216
5535333217
5535333218
5535333219
5535333220
5535333221
5535333222
5535333223
5535333224
5535333225
5535333226
5535333227
5535333228
5535333229
5535333230
5535333231
5535333232
5535333233
5535333234
5535333235
5535333236
5535333237
5535333238
5535333239
5535333240
5535333241
5535333242
5535333243
5535333244
5535333245
5535333246
5535333247
5535333248
5535333249
5535333250
5535333251
5535333252
5535333253
5535333254
5535333255
5535333256
5535333257
5535333258
5535333259
5535333260
5535333261
5535333262
5535333263
5535333264
5535333265
553533326

again explained to INS that it would not issue travel documents for Mr. Navaie without the originals of his Iranian birth certificate and passport. (DHS-374) On August 14, 2002, this Court dismissed the petition as moot, over a recommendation from a magistrate judge that the petition be granted, “as Petitioner is in the process of being released.” Order at 1, *Navaie v. Ashcroft*, No. 2:02-cv-265-PHX-SMM (D. Ariz. Aug. 14, 2002) (Dkt. #18) INS had notified Mr. Navaie that he would be released 10 days before this Court dismissed the petition. (DHS-362) He was given an order of supervision. (DHS-357)

In February 2006 Mr. Navaie was stopped by the California Highway Patrol. (DHS-318) A records check apparently turned up that Mr. Navaie failed to check in with ICE during an appointment scheduled for February 17, 2006. He in fact did so, and the contrary information that the records check turned up was corrected.

According to the declaration submitted by a deportation officer at the Otay Mesa Detention Center in San Diego, California, in the time between his release from immigration detention in 2002 and his re-arrest in 2025, Mr. Navaie was convicted of five misdemeanors in a total of three cases. (Dkt. #13-1 at 3 ¶¶ 10-12) The deportation officer reports that Mr. Navaie was convicted of theft and tampering with a vehicle in 2009, and sentenced to three years of probation. He also reports that Mr. Navaie was convicted of unreasonable noise in 2020, and sentenced to three years of probation. He also reports that Mr. Navaie was convicted of possession of narcotics and possession of drug paraphernalia in 2022, and sentenced to one year of probation. Upon review of the publicly available court records from the Orange County Superior Court, Mr. Navaie has no basis to contest this aspect of his criminal history. Regardless, the record shows that Mr. Navaie was not under any kind of criminal justice sentence when he was re-arrested in 2025 for the alleged failure to timely check in with ICE officials under the terms of his order of supervision.

Nothing in respondents’ disclosure reflects any attempt to obtain travel documents for Mr. Navaie between 2002 and 2025. According to the deportation officer, Mr. Navaie was arrested on March 13, 2025, when he reported for a check-in with the ICE office in Santa Ana,

California (Dkt. #13-1 at 4 ¶ 16) According to this detention officer, ICE “started the process of preparing a travel document request” on April 17, 2025. (Dkt. #13-1 at 4 ¶ 21) A month later ICE submitted a travel document request to an official with ICE headquarters for their review. (Dkt. #13-1 at 4 ¶ 22) On May 27, 2025, all this detention officer could say was that the request for travel documents was “pending.” (DHS-556) Two months later, according to this detention officer, headquarters explained that they had not received a response “as to the status of Petitioner’s travel documents.” (Dkt. #13-1 at 4 ¶ 23) And as recently as September 10, 2025, the detention officer explained that they had asked headquarters for a status update regarding Mr. Navaie’s travel documents. (Dkt. #13-1 at 4 ¶ 25) ICE does not appear to know whether they have, in fact, submitted a request for travel documents to the appropriate officials. (DHS-552 to DHS-555)

Argument

This is a simple case, and Mr. Navaie should prevail. The government has known for 24 years that it cannot obtain necessary travel documents that will facilitate Mr. Navaie’s return to Iran, because Mr. Navaie does not have documents that will satisfy the Iranian Interests Section of the Pakistani Embassy that he is an Iranian citizen. Even now, they have no evidence that they have documents to provide to the Iranian Interests Section that would satisfy them. There is simply no likelihood that Mr. Navaie will be removed to Iran in the reasonably foreseeable future—something the government has known for over two decades. The Court should grant Mr. Navaie’s motion for a preliminary injunction and, as authorized by Fed. R. Civ. P. 65(a), his petition as well.

- 1. The government has not even tried to carry its burden to rebut Mr. Navaie’s strong showing that there is no significant likelihood that he will be removed to Iran in the reasonably foreseeable future.**

All the evidence Mr. Navaie needed to show that there was no significant likelihood of his being removed to Iran in the reasonably foreseeable future was set forth in his petition. ICE knows that there is no such likelihood, because last year it acknowledged that Iran does not cooperate with its efforts to repatriate its citizens who have been ordered removed from the

United States. Respondents' disclosure under the auspices of this Court's discovery order only confirms Mr. Navaie's allegations. Discovery has only bolstered Mr. Navaie's allegations. ICE has known since 2001 that Iran will not provide travel documents for Mr. Navaie. ICE has not asked the Iranian Interests Section for travel documents since 2002, no matter what they have been doing in 2025. The only conclusion that this Court can draw in light of the evidence before it is that there is no significant likelihood that Mr. Navaie will be removed in the reasonably foreseeable future.

Despite all of this undisputed evidence, the government nevertheless believes that there is a significant likelihood of Mr. Navaie's removal in the reasonably foreseeable future. This is so, the government says, because in the six months that Mr. Navaie has been detained, "ERO started the process of preparing a travel request" and submitted it for internal review by ICE officials in Washington, DC. (Dkt. #13 at 7) The government does *not* say that it has provided the Iranian Interests Section with the documents that ICE has known since 2001 that would result in the issuance of travel documents for Mr. Navaie—his original Iranian passport and birth certificate. The government also does not say that ICE has sent *anything at all* to the Iranian Interests Section since 2002—and certainly not since Mr. Navaie was taken into respondents' custody on March 13, 2025. The government simply does not have any evidence to support its belief that Mr. Navaie's removal is foreseeable. This Court should not allow the government's false hope to substitute for such evidence.

Knowing that it cannot meet its burden to rebut the evidence that there is no likelihood that Mr. Navaie will be removed in the foreseeable future, the government instead faults Mr. Navaie for failing to meet his burden to show that there is no such likelihood. (Dkt. #13 at 6-8) It says that Mr. Navaie "provides conclusory assertions that ICE has classified Iran as uncooperative with its efforts to repatriate Iranian citizens who have been ordered removed." (Dkt. #13 at 7 (quoting Dkt. #3 at 1)) The evidence that the government says is conclusory consists in fact of a November 2024 report generated by ICE's Enforcement and Removal Operations division regarding the number of noncitizens on ICE's "non-detained docket with

final orders of removal.” (Dkt. #1-1 at 1) At the end of this report, ICE explains that it “works to remove undocumented noncitizens from the United States once they are subject to final orders of removal in a timely manner.” (Dkt. #1-1 at 7) “Currently,” the report continues, “ICE considers 15 countries to be uncooperative” with their “obligat[ions] to accept the return of [their] citizens and nationals who are ineligible to remain in the United States:” “Bhutan, Burma, Cuba, Democratic Republic of the Congo, Eritrea, Ethiopia, Hong Kong, India, Iran, Laos, Pakistan, People’s Republic of China, Somalia, and Venezuela.” (Dkt. #1-1 at 7) Inasmuch as the government denies Mr. Navaie’s allegations based on this document, the government does not say that this report is inauthentic. The government has made no effort to explain how an assertion that relies on ICE’s own admissions in an official document could be sensibly dismissed as “conclusory.”

In any event, the government cannot dispute that Mr. Navaie has met his burden under *Zadvydas* to provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701. He has been in immigration detention for six months, and so a presumption arises that there is no such likelihood of removal. *See id.* The evidence that ICE has provided confirms that the presumption is correct here. ICE knows that Iran is generally uncooperative with attempts to obtain travel documents for Iranian citizens who have been ordered removed from the United States. And ICE knows what documentation the Iranian Interests Section is asking for in order to issue travel documents for Mr. Navaie—the originals of Mr. Navaie’s Iranian passport and birth certificate. ICE simply does not have the documents that the Iranian Interests Section is asking for.

In sum, Mr. Navaie has conclusively shown that ICE cannot obtain travel documents for him, such that there is no significant likelihood of his removal in the reasonably foreseeable future. The government has no evidence that can rebut this showing. This Court should grant Mr. Navaie’s request for a preliminary injunction, combine the hearing on the motion with a trial on the merits of his first habeas claim under Fed. R. Civ. P. 65(a), and grant relief on that claim.

2. **The government has not shown how the factors that bear on the discretion to issue a preliminary injunction favor it.**

The parties agree on the governing standard for issuing a preliminary injunction (and a temporary restraining order). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843–44 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

“Alternatively, a preliminary injunction may issue where serious questions going to the merits were raised and the balance of hardships tips sharply in plaintiff’s favor if the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.* at 844 (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1135).

The government cannot overcome Mr. Navaie’s strong showing that all four of these factors favor him. He has already explained why there is no likelihood that he will be removed from the United States in the reasonably foreseeable future, such that he is likely to prevail on his *Zadvydas* claim. The government also says that Mr. Navaie is unlikely to prevail on his *Zadvydas* claim because he missed a scheduled check-in on March 12, 2025, and was arrested when he checked in the next day. (Dkt. #13 at 9) This is scant evidence that Mr. Navaie is a “true flight” risk—that is, presents a risk of leaving the jurisdiction entirely—but instead evidence of what one scholar terms “low-cost nonappearing,” such as when a person forgets the date of an appointment. *See generally* Lauryn P. Gouldin, *Defining Flight Risk*, 85 U. Chi. L. Rev. 677, 724–36 (2018) (distinguishing between degrees of “flight” for purposes of the Bail Reform Act of 1984). Showing up for a scheduled check-in on the wrong day surely is a less serious transgression of the conditions of supervision than going into hiding outright. The fact that Mr. Navaie may have mistaken the date of his check-in appointment cannot meaningfully detract from the conclusion that Mr. Navaie will not be removed from the United States in the reasonably foreseeable future.

The government posits that Mr. Navaie cannot show irreparable harm because “he is one-day over the presumptively reasonable detention six-month period, and actions are being taken to effectuate his removal.” (Dkt. #13 at 9) These are not reasons why Mr. Navaie is suffering harm from illegal detention. Because there is no likelihood that he will be removed in the foreseeable future, the presumption simply bolsters the affirmative evidence before this Court that his detention is illegally prolonged. And the government’s use of the passive voice—“actions are being taken to effectuate his removal”—is a classic technique of obfuscation. What the government is hiding through this language is that it has done *nothing* to request travel documents from the Iranian Interests Section that would result in the travel documents actually being issued. The preparatory steps that the government thinks are so valuable plainly cannot lead to that outcome. Mr. Navaie is being illegally detained. For that reason, each day that passes in which this illegal detention continues inflicts an irreparable harm.

Furthermore, the government’s assertion that the public interest and balance of the equities favor it, not Mr. Navaie, ignores a different aspect of *Zadvydas*. The government agrees that these factors merge when a person applies for an injunction against the government. (Dkt. #13 at 10) Then it adds that 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.” (Dkt. #13 at 10) But in *Zadvydas* the Court observed that the “plenary power” that Congress has “to create immigration law” “is subject to important constitutional limitations.” 533 U.S. at 695 (citing *INS v. Chadha*, 462 U.S. 919, 942–43 (1983)). The statute that authorizes Mr. Navaie’s detention here, 8 U.S.C. § 1231, contains “no clear indication of congressional intent to grant the Attorney General the power to hold indefinitely in confinement an alien ordered removed.” *Id.* at 697. The public has no interest in continuing to imprison a person like Mr. Navaie, whom the government cannot remove from the United States because it does not have the proper documentation. The Supreme Court has already said that such imprisonment is unauthorized by statute. The public has no interest in seeing its government act unlawfully.

Conclusion

Mr. Navaie's motion for a preliminary injunction should be granted. Furthermore, this Court should exercise its discretion under Fed. R. Civ. P. 65(a) to consolidate proceedings on that motion with a trial on the merits of his habeas petition and grant relief on his *Zadyydas* claim.

Respectfully submitted:

September 19, 2025.

JON M. SANDS
Federal Public Defender

s/Keith J. Hilzenreger
KEITH J. HILZENREGER
Assistant Federal Public Defender
Attorney for Petitioner Navaie