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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).

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[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.

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

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

[2] The Iranian Interests Section of the Pakistani Embassy in the United States is empowered to issue travel documents to Iranian citizens. *See, e.g.*, *Hekmati v. Islamic Republic of Iran*, 278 F. Supp. 3d 145, 150 (D.D.C. 2017); *Momennia v. Estrada*, 268 F. Supp. 2d 679, 685 (N.D. Tex. 2003).

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—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 *Zadvydas* claim.

Respectfully submitted: September 19, 2025.

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