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

12 David Salaryzadeh,
 13
 14 Petitioner,
 15 v.
 16 David R. Rivas, et al.,
 17
 18 Respondents.

No. CV-25-03274-PHX-SMB (ASB)

**RESPONSE IN OPPOSITION TO
 MOTION FOR PRELIMINARY
 INJUNCTION AND FOR A
 TEMPORARY RESTRAINING
 ORDER**

19 Respondents David R. Rivas, Warden, San Luis Regional Detention Center;
 20 Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs
 21 Enforcement, Kristi Noem, Secretary of Department of Homeland Security (DHS), and
 22 Pam Bondi, Attorney General of the United States (Respondents), through undersigned
 23 counsel, respond in opposition to Petitioner’s Motion for a Preliminary Injunction (PI) and
 24 Temporary Restraining Order (TRO). Doc. 6. The Court should deny the request because
 25 Petitioner, a convicted criminal with seven criminal convictions, is mandatorily detained
 26 under 8 U.S.C. § 1231(a)(1)(A). He nonetheless seeks an order directing ICE to
 27 immediately release him from immigration detention. Based on his numerous criminal
 28 convictions, and less than 90-day mandatory detention beginning when he was

1 apprehended in ICE custody on July 8, 2025, following a recent arrest in California, the
2 Court should deny his request for injunctive relief. This Response is supported by the
3 following Memorandum of Points and Authorities and attached declaration.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. Background.**

6 1. Petitioner David Salaryzadeh (Petitioner) is neither stateless nor is there any
7 impediment to his removal to Germany, his birth country, due to the fact that when he
8 entered the United States, Germany was divided into countries, or Iran. Petitioner was born
9 in Germany on [REDACTED] See Declaration of Victor Ayala, Deportation Officer,
10 attached as Exhibit A, at ¶ 4. Records indicate that he was admitted into the United States
11 on March 28, 1983, in New York, New York. *Id.* at ¶ 5. On April 10, 2001, he was
12 convicted for violating Section 11357(a) of California Health and Safety Code, possession
13 of concentrated cannabis. *Id.* at ¶ 6. On September 3, 2003, he left the United States for
14 Mexico, and he applied for admission via the San Ysidro Port of Entry in Mexico. *Id.* at ¶
15 8. He was deemed inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I)
16 of the INA. *Id.* at ¶ 9. As an arriving alien, he was subsequently served with a Notice to
17 Appear (NTA), Form I-862, on June 20, 2001, and an Immigration Judge (IJ) in San Diego
18 ordered him removed to Germany, or in the alternative, Iran, on August 16, 2004. *Id.* at ¶¶
19 8-10. His final order of removal is thus dated August 16, 2004. Around November 2004,
20 he was released from ICE custody on an Order of Supervision subject to certain written
21 conditions, which included an agreement not to crimes any crimes.¹ *Id.* at ¶ 12.

22 Petitioner did not abide by those conditions, as he has a lengthy criminal history,
23 beginning on January 18, 2011, when he was sentenced to 8 months in prison for
24

25 ¹ The plain language of the statute at 8 U.S.C. § 1231(a)(3)(D) allows the Attorney General
26 to set conditions for supervised release from immigration detention such as “to obey
27 reasonable written restrictions on the alien’s conduct or activities that the Attorney
28 prescribes for the alien.” *Id.* In this regard, the statute gives the Attorney General wide
discretion to set restrictions on an alien’s behavior once granted supervised release. *See*
Zavala v. Prendes, No. 3-10-CV-1601-K-BD, 2010 WL 4454055, at *1 (N.D. Tex. Oct. 5,
2010), *report and recommendation adopted*, No. 3:10-CV-1601-K, 2010 WL 4627736
(N.D. Tex. Nov. 1, 2010).

1 participating in a criminal street gang. *Id.* at ¶ 13. After that, he continued to participate in
2 criminal activity from June 4, 2012, through January 6, 2017, and violated his terms of
3 supervision several times. *Id.* On June 4, 2012, he was convicted of Receiving Known
4 Stolen Property and sentenced to 16 months in prison and convicted of Burglary in the
5 Second Degree and sentenced to 16 months in prison a year later on June 17, 2013. *Id.* at
6 ¶¶ 14-15. He was convicted of violating the terms of his post-release community
7 supervision and sentenced to 2 years in prison on June 12, 2013. *Id.* at ¶ 16. He was again
8 convicted of violating the terms of his post-release community supervision and sentenced
9 to 2 years in prison on July 30, 2014. *Id.* at ¶ 17. On July 22, 2014, he was convicted of
10 Receiving Known Stolen Property and sentenced to 90 days in jail. *Id.* at ¶ 18.

11 The severity of his crimes increased on January 6, 2017, when he was convicted of
12 Assault with a Deadly Weapon, a felony, and sentenced to several years in prison in
13 California. *Id.* at ¶ 19. That day, he was also convicted of Personally Inflicting Great
14 Bodily Injury, a felony, and convicted of 5 years in prison. *Id.* He was served with a Notice
15 of Revocation of Release on October 31, 2016, due to his above criminal convictions. *Id.*
16 at ¶ 20. He was issued an Order of Supervision, Form I-220B, on December 16, 2016. *Id.*
17 at ¶ 21. In violation of that order, Petitioner was arrested on September 19, 2024, and taken
18 into custody subsequently to serving him an Assumption of Custody Modification, Form
19 71-075, at the Correctional Training Facility, in Soledad, California. *Id.* at ¶ 22. He was
20 served with an Order of Supervision on September 19, 2024, requiring him to meet
21 reporting requirements and assisting ERO in obtaining any necessary travel documents. *Id.*
22 at ¶ 23. On May 15, 2025, he was arrested with possession of hard drugs in violation of
23 Cal. Pen. Code § 11395(b)(1), with priors, and charged in Orange County, California,
24 Superior Court. *Id.* at ¶ 24.

25 On July 8, 2025, U.S. Immigration and Customs Enforcement/Enforcement and
26 Removal Operations (ICE/ERO), apprehended the Petitioner at the Orange County
27 Sheriff's Department, Theo Lacy Facility in Orange, CA, after notification of his release.
28 *Id.* Following his release from criminal custody, he was transported to the ICE/ERO office

1 in Santa Ana, CA, he was taken into ICE custody on July 8, 2025. *Id.* at ¶ 25.

2 **II. Temporary Restraining Orders and Preliminary Injunctions Standard.**

3 The substantive standard for issuing a temporary restraining order is identical to the
4 standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D.*
5 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable
6 discretion and is “an extraordinary remedy that may only be awarded upon a clear showing
7 that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
8 7, 22 (2008). Preliminary injunctions are “never awarded as of right.” *Id.* at 24.

9 Preliminary injunctions are intended to preserve the relative positions of the parties
10 until a trial on the merits can be held, “preventing the irreparable loss of a right or
11 judgment.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.
12 1984). Preliminary injunctions are “not a preliminary adjudication on the merits.” *Id.* A
13 court should not grant a preliminary injunction unless the applicant shows: (1) a strong
14 likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable
15 injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4)
16 the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,
17 a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.*
18 at 22. Where the government is a party, courts merge the analysis of the final two *Winter*
19 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,
20 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
21 Alternatively, a plaintiff can show that there are “‘serious questions going to the merits’
22 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and
23 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d
24 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-
25 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in
26 proving that they are entitled to this ‘extraordinary remedy.’” *Earth Island Inst. v. Carlton*,
27 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s carries a “heavy” burden. *Id.*

28 A preliminary injunction can take two forms. A “prohibitory injunction prohibits a

1 party from taking action and preserves the status quo pending a determination of the action
2 on the merits.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873,
3 878-79 (9th Cir. 2009) (cleaned up). A “mandatory injunction orders a responsible party to
4 take action. . . . A mandatory injunction goes well beyond simply maintaining the status
5 quo pendente lite and is particularly disfavored.” *Id.* at 879 (cleaned up). A mandatory
6 injunction is “subject to a higher degree of scrutiny because such relief is particularly
7 disfavored under the law of this circuit.” *Stanley v. Univ. of S. California*, 13 F.3d 1313,
8 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be
9 “extremely cautious” when issuing this type of relief, *Martin v. Int’l Olympic Comm.*, 740
10 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied “unless
11 extreme or very serious damage will result,” and even then, not in “doubtful cases.” *Marlyn*
12 *Nutraceuticals, Inc.*, 571 F.3d at 879; accord *LGS Architects, Inc. v. Concordia Homes of*
13 *Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740
14 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts
15 and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

16 **III. Detention Standard Governing Aliens Ordered Removed.**

17 The detention, release, and removal of aliens subject to a final order of removal is
18 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.
19 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the
20 United States after an order of removal becomes final. During this “removal period,”
21 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been
22 removed and remains in the United States, his detention may be continued, or he may be
23 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3)
24 and (6). Under this section, ICE may detain an alien for a “reasonable time” necessary to
25 effectuate the alien’s deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite
26 detention is not authorized. *Id.* The Immigration and Nationality Act (INA) further
27 provides that aliens who are inadmissible under 8 U.S.C. § 1182 may be detained beyond
28 the 90-day period pending removal. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(a)(1), (4).

1 To be entitled to release from detention, Petitioner has the burden to show that his
2 removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
3 701. Only then does the burden shift to the Government to show that removal is
4 significantly likely to occur in the reasonably foreseeable future. *Id.* Petitioner has not met
5 his burden to show that his removal is unlikely in the reasonably foreseeable future and,
6 even if he could, the Government can overcome that with evidence showing that his
7 removal is likely. In *Zadvydas*, the Supreme Court designated six months as a
8 presumptively reasonable period of time to allow the Government to remove an alien
9 detained under 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after
10 six months of detention. *Id.* at 701 (“This 6-month presumption, of course, *does not mean*
11 *that every alien not removed must be released after six months.* To the contrary, an alien
12 may be held in confinement until it has been determined that there is no significant
13 likelihood of removal in the reasonably foreseeable future.”) (emphasis added). The
14 passage of time alone is insufficient to establish that no significant likelihood of removal
15 exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118
16 (W.D. Wash. 2002). In *Lema*, where the alien had been detained for more than a year, the
17 district court held that the passage of time was only the first step in the analysis, and that
18 the alien must then provide good reason to believe that no significant likelihood of removal
19 exists in the reasonably foreseeable future. *Id.*

20 **IV. A Preliminary Injunction Is Not Warranted.**

21 A “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v. Geren*,
22 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only
23 “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*
24 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). As the Supreme Court has
25 articulated, “[a] stay is not a matter of right, even if irreparable injury might otherwise
26 result” but is instead an exercise of judicial discretion that depends on the particular
27 circumstances of the case. *Nken*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*,
28 272 U.S. 658, 672 (1926)).

1 **A. Petitioner’s detention is lawful and constitutionally permitted.**

2 Petitioner is detained pursuant to a valid final order of removal dated August 16,
3 2004. Ex. A at ¶ 11. While he has remained in the United States since, that time was not
4 spent in ICE custody. Rather, he spent several of those years, from June 4, 2012, through
5 January 6, 2017, specifically, committing crimes, including violent felonies, and serving
6 prison sentences. *Id.* at ¶ 13. He also violated his subsequent release conditions several
7 times during that time frame. *Id.* at ¶¶ 16, 17, 20. He was arrested again as recently as May
8 15, 2025, committing another violation. *Id.* at ¶ 24. Subsequently, following his release
9 from criminal custody, he was recently apprehended into ICE custody on July 8, 2025,
10 where his detention remains lawful and constitutionally permitted. *Id.* at ¶ 25.

11 **B. Petitioner is Mandatorily Detained.**

12 Addressed above, the detention of aliens subject to a final order of removal is
13 governed by § 241 of the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney
14 General has 90 days to remove an alien from the United States after an order of removal
15 becomes final. During this “removal period,” detention of the alien is mandatory. *Id.* That
16 time period applies to this case. Petitioner was apprehended into ICE custody on July 8,
17 2025, less than 90 days ago. Ex. A at ¶ 25. Thus, he is still well-within the mandatory
18 removal period authorized under 8 U.S.C. § 1231.

19 The analysis governing reasonable likelihood of removal as outlined under
20 *Zadvydas* only applies when the alien has been detained past the six-month presumptive
21 mark. *Zadvydas* places the burden on the alien to show, after a detention period of six
22 months, that there is “good reason to believe that there is no significant likelihood of
23 removal in the reasonably foreseeable future.” *Id.* at 701. Petitioner is not there yet. His
24 clock started running less than 90 days ago, so the six-month analysis is premature and
25 does not expire until January 8, 2026. Only then, if the alien makes that showing, which
26 Petitioner cannot, the Government must then introduce evidence to refute that assertion to
27 keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir.
28 2002). The Court must “ask whether the detention in question exceeds a period reasonably

1 necessary to secure removal. It should measure reasonableness primarily in terms of the
2 statute's basic purpose, namely, assuring the alien's presence at the moment of removal.

3 Based on the above, Petitioner is mandatorily detained, and the *Zadvydas* analysis
4 governing likelihood of removal is premature, and thus, inapplicable.

5 **IV. A PRELIMINARY INJUNCTION IS NOT WARRANTED.**

6 A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*,
7 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only
8 "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural*
9 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction,
10 the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims;
11 (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that
12 the balance of equities tips in its favor; and (4) that the proposed injunction is in the public
13 interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a]
14 stay is not a matter of right, even if irreparable injury might otherwise result" but is instead
15 an exercise of judicial discretion that depends on the particular circumstances of the case.
16 *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States*, 272
17 U.S. 658, 672 (1926)).

18 **A. Plaintiff Cannot Establish a Likelihood of Success on the Merits.**

19 The Court should deny Petitioner's Motion because Petitioner "must demonstrate
20 immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean*
21 *Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The "possibility" of
22 injury is "too remote and speculative to constitute an irreparable injury meriting
23 preliminary injunctive relief." *Id.* "Subjective apprehensions and unsupported predictions
24 . . . are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat
25 of irreparable harm." *Id.* at 675-76. He claims that his "indefinite detention in immigration
26 custody violates the Due Process Clause of the Fifth Amendment because there is no
27 significant likelihood that he can be removed to Germany or Iran in the reasonably
28 foreseeable future." Doc. 6 at 2.

1 Petitioner cannot establish a likelihood of success on the merits for two reasons: 1)
2 he is mandatorily detained under 8 U.S.C. § 1231, and 2) allegations that his removal to
3 any third country, including Germany, Iran, or otherwise, violates his due process rights is
4 premature at this juncture. Respondents also deny that Petitioner is “stateless.” An IJ
5 ordered him removed to Germany, or Iran, on August 16, 2004. Ex. A at ¶ 10.

6 Petitioner has been detained less than 90 days, as he was apprehended on July 8,
7 2025. *Id.* at ¶ 25. Therefore, Petitioner is unlikely to succeed on the merits of his habeas
8 claim and is not entitled to injunctive relief—particularly regarding his request for
9 “immediate release,” which would directly violate 8 U.S.C. § 1231.

10 Additionally, Petitioner may serve as a danger to the community. In *Zadvydas*, the
11 Supreme Court specifically held that release after the removal period where removal is not
12 likely in the reasonably foreseeable future “should be conditioned on any of the various
13 forms of supervised release that are appropriate in the circumstances, and the alien may *no*
14 *doubt* be returned to custody upon a violation of those conditions. *Zadvydas*, 533 U.S. at
15 700 (emphasis added) (citing 8 U.S.C. § 1231(a)(3)(D); 8 C.F.R. § 241.5). And that if an
16 alien is returned to custody, the habeas court should consider the risk of the alien
17 committing further crimes as a factor potentially justifying confinement within the
18 reasonable removal period. *Id.* This Court should consider those concerns here. Petitioner’s
19 excessive criminal activity and repeated violation of his release conditions, raise serious
20 concerns were he to be released back into the community, and reoffend.

21 **B. Plaintiff Cannot Establish Irreparable Harm.**

22 To show harm, a movant must allege that concrete, imminent harm is likely with
23 particularized facts. *Winter*, 555 U.S. at 22. The only claim Petitioner makes with respect
24 to irreparable harm is that his “illegal confinement is quintessentially irreparable harm.”
25 Doc. 2 at 2. But as established, Petitioner’s less-than 90-day confinement is neither illegal
26 nor unconstitutional. *Zadvydas*, 533 U.S. at 701. Rather, he cannot establish any irreparable
27 harm from his continued detention while the Government executes his removal order. This
28 factor weighs in favor of the Government.

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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 aliens who have violated the conditions of their supervised release detained pending execution of their removal orders. This factor also weighs in the Governments’ favor.

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 26, 2025.


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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and mailed the attached to the following individuals who are not registered participants of the CM/ECF System:

David Salaryzadeh

San Luis Regional Detention Center
406 N. Avenue D
San Luis, Arizona 85349

s/Allison Tambs
United States Attorney’s Office