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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Mohamed Hassan Barka,

Petitioner,

v.

Chief Counsel DHS,

Respondent.

Case No. 2:25-cv-01781-GMN-MDC

Respondent's Omnibus Response to Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 17) and Motion for Temporary Restraining Order (ECF No. 19).

I. Introduction

Respondent, Kristi Noem, Secretary of the Department of Homeland Security (erroneously sued herein as Chief Counsel DHS), through counsel, Sigal Chattah, First Assistant United States Attorney for the District of Nevada, and Summer A. Johnson, Assistant United States Attorney, hereby files this omnibus response to Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 17) filed by Mohamed Hassan Barka ("Petitioner") and Motion for Temporary Restraining Order (ECF No. 19). As explained herein, Petitioner's continued detention is lawful under statutory authority and Supreme Court precedent, which allow for such detention after a final order of removal.

II. Factual Background

Petitioner is a native and citizen of Egypt. ECF No. 17 at 2. On or around September 2024, Petitioner was taken into DHS custody. *Id.* On January 15, 2025, an Immigration Judge ordered that Petitioner was inadmissible under sections 212(a)(7)(i)(1)

and 212(a)(6)(A)(i) of the INA. *See* ECF No. 12-1, at 1. The IJ denied Petitioner's request for asylum and withholding of removal under the Convention Against Torture. *Id.* at 1. The IJ ordered that Petitioner be removed from the United States but withheld the removal as to Egypt. *See id.* at 1, 3. The court alternately ordered Petitioner removed to Italy. *Id.* at 3. Both DHS and Petitioner waived appeal of the order. *Id.* at 4. Following the Order of Removal, Petitioner continued his detention in DHS custody. During his detention, DHS has sought to obtain travel documents to effectuate Petitioner's removal to Italy.

Petitioner filed this action on September 22, 2025, including a Petition for Writ of Habeas Corpus. *See* ECF No. 1. The Court ordered the Petition be filed on November 3, 2025, and ordered the Respondent to respond to the Petition. ECF No. 5. In December 2025, the Court issued an order appointing the Federal Public Defender as counsel for Petitioner. ECF No. 13. On December 16, 2025, Petitioner filed an Amended Petition for Writ of Habeas Corpus and a Motion for Temporary Restraining Order. ECF Nos. 17, 19. The Court ordered Federal Respondents to respond to the writ and the motion by December 23, 2025. ECF No. 20. This omnibus response follows.

III. Argument

A. Petitioner's Request for Injunctive Relief Fails Because He Cannot Establish a Likelihood of Success on the Merits

In his Motion, Petitioner seeks an order granting Petitioner's request for a TRO and ordering Respondents to release Petitioner. ECF No. 19, at 3. In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839, n. 7 (9th Cir. 2001). To prevail on a motion for a preliminary injunction, a plaintiff 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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009).

Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [Winter factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief — balancing of the harm to the opposing party and the public interest — merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically acknowledged that "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant seeking injunctive relief "must show either (1) a probability of success on the merits and the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the [moving party's] favor.") (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001)).

1. Petitioner Cannot Establish a Likelihood of Success on the Merits that His Detention Violates His Due Process

i. ICE is Authorized to Detain and Deport Petitioner

ICE can lawfully detain Petitioner because he is subject to a final order of removal and can be detained under 8 U.S.C. § 1231(a)(6). Second, following Supreme Court precedent, Petitioner has not established the requisite "good reason to believe" that there is no significant likelihood of his removal in the reasonably foreseeable future, as required under *Zadvydas* to shift the burden to the government.

ii. ICE Lawfully Detained Petitioner Pursuant to 8 U.S.C. § 1231(a).

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must

detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 212 of the INA (8 U.S.C. § 1182); (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

Petitioner is outside the initial 90-day mandatory removal period which commenced following his order of removal on January 15, 2025. However, he is still eligible for ICE detention beyond the initial ninety days as he is subject to removal under section 212 of the INA. (8 U.S.C. § 1182). Specifically, the IJ's Order of Removal found that Petitioner was inadmissible under sections 212(a)(7)(i)(1) (alien does not possess a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the INA) and 212(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General) of the INA. *See* Exhibit A. This order is now final.

Because Petitioner has been ordered removed pursuant to section 212(a)(7)(i)(1) and 212(a)(6)(A)(i) of the INA, ICE has statutory authority to detain Petitioner to effectuate his removal order from the United States and he is not entitled to a bond hearing or release as § 1231(a)(6) does not require such process. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574, 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings before immigration judges or burdens of proof"). Petitioner's detention is therefore lawful under § 1231(a)(6) and this Court should dismiss his Petition.

iii. Petitioner's Detention Does Not Run afoul of *Zavydas*.

Under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court established that detention for up to six months after a final order of removal is "presumptively

reasonable." As the Court explained in *Zadvydas*, detention beyond the 90-day removal period is justified when it is "reasonably necessary" to effectuate removal. *Id.* After six months, the burden shifts to the petitioner to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden reverts to the government to rebut that showing *Id.* at 701. The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "Zadvydas, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.").

Here, Petitioner's final Order of Removal was entered in January 2025. As a result, Petitioner's current period of post-removal-order detention has exceeded the six-month timeframe that *Zadvydas* identifies as *presumptively reasonable.* But crossing that temporal threshold does not itself entitle a detainee to relief. Once the six-month mark passes, the burden shifts to the Petitioner to provide evidence giving rise to a "reason to believe" that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner has not met that burden.

The Petition contains no factual allegations demonstrating that removal is not reasonably foreseeable. Petitioner merely states that three countries have been contacted "but no other country has agreed to take him." ECF No. 17 at 15. This assertion lacks the specificity necessary to satisfy *Zadvydas*. It does not identify when the requests were made, the basis for any non-acceptance, whether additional requests are pending, or whether DHS is continuing to pursue removal efforts. Nor does it show that any country has affirmatively refused repatriation or that further negotiations would be futile. Absent evidence that DHS has reached a dead end — or that diplomatic channels have been exhausted — Petitioner has

not established the "good reason to believe" necessary to trigger further analysis under *Zadvydas*.

2. Petitioner Is Unlikely to Succeed on his Third County Due Process Violation Claim Because it Rests on a Non-Existent Third-Country Removal Order

Petitioner cannot establish a likelihood of success on his due process claim because no third-country removal has been identified, designated, or initiated. The Ninth Circuit has made clear that, in the context of third-country removals, due process protections — including notice and an opportunity to reopen to pursue withholding or CAT claims — are triggered when the agency identifies a third country of removal. *See Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) ("[A]n applicant is not entitled to have the agency adjudicate claims of relief that relate 'to a country that nobody is trying to send them to.'") Here, none of the predicates for those protections are present.

At present, DHS has not designated a third country for Petitioner's removal, nor has it issued a Notice of Removal identifying any third country. Absent such agency action, Petitioner's due process claim rests entirely on speculation. An off-hand remark attributed to DHS personnel suggesting that there are other countries that DHS are reviewing as potential third county possibilities does not constitute a decision, designation, or operative removal order. *See* ECF No. 17 at 15. Nor does it trigger the procedural protections discussed in *Sadychov*. Until DHS identifies a third country of removal and provides formal notice, there is no cognizable deprivation of liberty or statutory right, and therefore no ripe due process claim for the Court to adjudicate.

Because Petitioner has not shown that a third-country removal is occurring — or even imminent — he cannot demonstrate that DHS has failed to provide constitutionally required process. His claim thus fails at the threshold and cannot support the extraordinary relief of a temporary restraining order.

B. Petitioner Has Failed to Show an Irreparable Harm.

To prevail on their request for injunctive relief, Petitioners must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674

(9th Cir. 1988) (*citing Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

C. Factors Three and Four also Weigh against Petitioner.

When "the government is a party, [courts] consider the balance of the equities and the public interest together." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). And "[i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). Here, an adverse decision would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws" by requiring "the Court to severely restrict the discretion of the Attorney General." *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined."). The public has an interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal."). As with the irreparable harm analysis, the "determination of where the public interest lies also is dependent on the determination of the likelihood of success on the merits of the [constitutional] challenge." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), overruled on other grounds by *Phelps-Roper v. City of Manchester, Mo.*, 697

F.3d 685, 690 (8th Cir. 2012). While it is "always in the public interest to protect constitutional rights," *id.*, when, as here, Petitioner has not shown a likelihood of success on the merits of that claim, that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Accordingly, Petitioner has not established that he merits an injunction, and the Court should deny this request.

D. For similar reasons, Petitioner's Amended Petition for Habeas Corpus Should be Denied

For the same reasons that Petitioner cannot establish a likelihood of success on the merits sufficient to warrant injunctive relief, his Amended Petition for Writ of Habeas Corpus likewise fails and should be denied.

As set forth above, Petitioner is subject to a final order of removal and is lawfully detained pursuant to 8 U.S.C. § 1231(a)(6). His detention falls squarely within the statutory framework governing post-removal-order custody, and Supreme Court precedent forecloses his claim to release or a bond hearing under that provision. *See Johnson*, 596 U.S. at 581. Petitioner has not satisfied the burden required under *Zadvydas*, 533 U.S. 678, to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future, nor has he alleged facts showing that DHS's ongoing efforts to effectuate removal have reached an impasse.

Petitioner's third country due process claims fare no better. As discussed above, his challenge to a purported third-country removal rests on speculation and the absence of any operative agency action. Because DHS has not designated a third country of removal or issued a notice identifying such a country, Petitioner has not suffered any deprivation of process cognizable under the Due Process Clause. *See Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014).

Finally, habeas relief is not warranted where, as here, the challenged detention is authorized by statute and consistent with constitutional limitations as articulated by the Supreme Court. *See Demore*, 538 U.S. at 523. Petitioner therefore has not demonstrated that

his custody violates the Constitution, laws, or treaties of the United States, and his Amended Petition must be denied.

IV. Conclusion

For the reasons set forth above, Petitioner has not demonstrated that his continued detention is unlawful or that he is entitled to the extraordinary relief he seeks. Accordingly, Federal Respondents respectfully request that the Court deny the Amended Petition for Writ of Habeas Corpus and the Motion for Temporary Restraining Order.

Respectfully submitted this 23rd day of December 2025.

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