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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Shahab Kazemzadeh, Petitioner, v. The United States of America, et al., Respondents.	Case No. 2:25-cv-1941-JAD-NJK **Response to Emergency Motion for Temporary Restraining Order (ECF No. 8) and Memorandum of Law In Support of Temporary Restraining Order (ECF No. 9)**

I. Introduction

Respondents, the United States of America, Kristi Noem, Pamela J. Bondi, Kerri Ann Quihuis, Michael Bernacke, and Patrick J. Lechleitner, 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 response to Petitioner's Motion for Temporary Restraining Order and Memorandum of Law in Support of Temporary Restraining Order. ECF Nos. 8, 9.

Petitioner seeks emergency relief based on speculation rather than law or fact. His detention is authorized under 8 U.S.C. § 1231(a)(6), lawfully reinstated under 8 C.F.R. § 241.13(i)(2), and constitutionally permissible under *Zadvydas v. Davis*, 533 U.S. 678 (2001), as removal is reasonably foreseeable. His third-country due process claim likewise fails

because no third country has been designated and no notice of third-country removal has issued; due process protections arise only once the agency identifies a third country. *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014). Because Petitioner cannot show a likelihood of success or irreparable harm, the motion for a temporary restraining order should be denied.

II. Factual and Procedural Background

Petitioner is a native and citizen of Iran. ECF No. 1 at ¶9. He is currently detained at the Nevada Southern Detention Center. *Id.* ¶8. At an unknown time and unknown place, Petitioner entered the United States as a refugee. *Id.* ¶23; *see also* ECF 6-2, Record of Deportable/Inadmissible Alien. In or around 2001, Petitioner was charged with 6 counts of Sexual Assault. On August 7, 2002, he was convicted on all counts. *See* ECF 6-4, at 3-5. Petitioner was sentenced to six concurrent "indeterminate term[s] not less than ten years and which may be life in the Utah State Prison." *Id.* at 4.

On March 4, 2020, an Immigration Judge ordered that Petitioner be removed to Iran. ECF No. 1 at ¶24; *see also* ECF No. 6-3, Order of Immigration Judge, at 2. Petitioner waived his right to appeal the March 4, 2020 order of removal. ECF No. 1 at ¶25 and ECF No. 6-3, at 2. Following the Order of Removal, Petitioner was released from ICE custody as ICE was unable to secure a travel document for Petitioner. ECF No. 1 at ¶24; ECF No. 6-2 at 2.

Following Petitioner's release from ICE custody, on June 23, 2025, Petitioner was re-detained. ECF No. 1 at ¶ 30. During this recent detention, DHS has sought to obtain travel documents to effectuate Petitioner's removal to Iran. ECF No. 1 at ¶¶ 26, 30. On July 25, 2025, Petitioner was provided with a Notice to Alien of File Custody Review, which advised Petitioner that he would receive a custody status review on or about September 21, 2025. *See* ECF No. 6-5, Notice to Alien of File Custody Review. The Notice advised Petitioner that he could submit documentation in support of his release. *Id.*

In September 2025, Petitioner was provided a 90-day detention review pursuant to 8 C.F.R. § 241.4 after which he remained detained. ECF No. 1 at ¶28; *see* ECF No. 6-6, Decision to Continue Detention. The Decision noted that "[if] you have not been released

or removed from the United States at the expiration of the three-month period after this 90-day review, jurisdiction of the custody decision in your case will be transferred…The ERO Removal Division will thereafter conduct a custody review…" *Id.* at 1-2. The Decision further notes that "ICE/ERO expects to effectuate your removal from the United States in the foreseeable future." *Id.* DHS continues to seek travel documents from the Iranian government. *Id.* ¶¶ 26, 30.

Petitioner filed this action on October 9, 2025, including a Petition for Writ of Habeas Corpus. *See* ECF Nos. 1, 1-1. Respondents filed its response on October 28, 2025. ECF No. 6. Following the briefing on the Petition for Writ of Habeas Corpus, Petitioner filed an Emergency Motion for Temporary Restraining Order on November 11, 2025 (ECF No.8) and a Memorandum in Support of Temporary Restraining Order (ECF No. 9). The Court ordered Respondents to file a response by December 17, 2025. ECF No. 10. This timely 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 Emergency Motion, Petitioner seeks an order granting Petitioner's request for a TRO and ordering "Petitioner's immediate release from ICE Custody." ECF No. 8, at 11. 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

In *Zadvydas* v. Davis, 533 U.S. 678 (2001), the Supreme Court construed § 1231 "to contain an implicit 'reasonable time' limitation, the application of which is subject to federal-court review." 533 U.S. at 682. When a removable alien is detained beyond this reasonable time and "removal is not reasonably foreseeable, the court should hold continued detention unreasonable." *Id.* at 699. The Court adopted a six-month period of presumptive reasonableness and confirmed that "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 710.

Petitioner has been detained since June 23, 2025. Petitioner's current period of detention—less than six months at the time of this filing—remains within the range deemed presumptively reasonable under governing precedent. Additionally, nothing in the record suggests, beyond speculation, that his removal is not reasonably foreseeable. Past difficulties in repatriating Iranian nationals have been overcome by recent diplomatic developments. The United States has entered into an agreement with Iran providing for the return of

approximately 400 individuals under final orders of removal. Consistent with that agreement, DHS has already effectuated removals through two confirmed repatriation flights, including one in September 2025 and another on December 7, 2025.[1] *See* Exhibit A. Given that Petitioner's detention is of a presumptively reasonable duration and that his removal to Iran is reasonably foreseeable, Petitioner's request for injunctive relief must fail as he cannot show a likelihood of success on the merits.

To the extent the Court reviews this matter *after* the six month presumptively reasonable time has expired, Petitioner fares no better, as release from detention is not automatic. 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 was re-detained in June 2025. However, crossing the six-month 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.

In his Emergency Motion, Petitioner asserts that the Iranian Embassy has "formally notified ICE" that Iran will not accept him, will not issue travel documents, and will not cooperate with removal. ECF No. 8 at 2. However, in Petitioner's Memorandum of Law, he

[1] https://www.bbc.com/news/articles/c23e77ln3d1o (last accessed December 17, 2025).

describes this information being conveyed to Petitioner in 2020. "Specifically, in 2020, an ICE agent contacted the Embassy and arranged for Petitioner to call the Iranian consulate. Both the ICE agent and Petitioner were informed that Iran cannot issued him travel documents and will not accept him in Iran." ECF No. 9 at 2. First, these assertions are unsupported by competent evidence. Petitioner submits no declaration from a government official, no correspondence from the Iranian government, and no documentary proof reflecting ICE's removal efforts or communications with foreign authorities. Unsupported, self-serving statements by a detainee or counsel do not constitute evidence sufficient to satisfy Petitioner's threshold burden under *Zadvydas*. Second, as demonstrated above, Iran *has* begun to accept repatriated Iranian nationals due to an agreement reached with the current administration. Because Petitioner has failed establish that there is no significant likelihood of removal in the reasonably foreseeable future, the burden never shifts to the Government, and his due process challenge to continued detention under § 1231(a)(6) necessarily fails.

2. Petitioner is Unlikely to Succeed on the Merits of His Argument that ICE Violated its Own Regulations.

8 C.F.R. § 241.13(i)(2) provides the basis for the revocation of supervised release in advance of an alien's removal:

> The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal.

As noted above, although historically the repatriation of Iranian nationals has presented logistical challenges, those circumstances have now changed. During Petitioner's detention, the United States entered into an agreement with the Government of Iran to accept approximately 400 Iranian detainees currently subject to final orders of removal. This recent diplomatic development demonstrates that removals to Iran are now not only feasible but actively underway. Two plane loads have been confirmed as re-patriating Iranian

nationals, once in September 2025 and a second as recent as December 7, 2025. *See* Exhibit A.

These developments constitute precisely the type of "changed circumstances" contemplated by 8 C.F.R. § 241.13(i)(2) and provide DHS with a reasonable and lawful basis to conclude that there is now a significant likelihood of Petitioner's removal in the reasonably foreseeable future. The existence of active repatriation flights, coupled with a bilateral agreement facilitating removals, defeats any assertion that removal is speculative or unforeseeable. At minimum, these facts demonstrate that DHS's determination was reasonable and grounded in concrete developments, not conjecture.

Because DHS acted squarely within its regulatory authority, and because current circumstances support a significant likelihood of removal, Petitioner cannot demonstrate a likelihood of success on the merits—a prerequisite for the extraordinary remedy of a temporary restraining order.

3. 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 removal to a third country "may" be attempted at some future point does not constitute a decision, designation, or operative removal order. *See* ECF

No. 9 at 2. 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.

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IV. Conclusion

Petitioner has not met—and cannot meet—the demanding standard required for the extraordinary relief he seeks. His detention is authorized by statute and regulation, remains constitutionally permissible, and is supported by changed circumstances demonstrating that removal is reasonably foreseeable. His due process challenge to a speculative third-country removal is unripe and unsupported, as no third country has been designated and no notice of removal has issued. Because Petitioner cannot establish a likelihood of success on the merits, irreparable harm, or that the balance of equities and public interest favor injunctive relief, the Court should deny Petitioner's Emergency Motion for Temporary Restraining Order in its entirety.

Respectfully submitted this 17th day of December, 2025.

TODD BLANCHE
Deputy Attorney General
SIGAL CHATTAH
First Assistant United States Attorney

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney

Certificate of Service

I, Summer A. Johnson, hereby certify that a copy of the foregoing Response to Emergency Motion for Temporary Restraining Order (ECF No. 8) and Memorandum of Law In Support of Temporary Restraining Order (ECF No. 9) was served via the CM/ECF Electronic File and Serve system, and to the following individuals by the stated service methods:

Via U.S. First Class Mail:
Shahab Kazemzadeh
Alien No. [redacted]
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump NV 89060

Dated this 17th day of December 2025.

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney