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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

Patrik Nazarian, Petitioner, v. Kristi Noem, Secretary of the Department of Homeland Security; et. al, Respondents.	No. 5:25-cv-02694-KK-ADS **FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER** **[Filed Concurrently with the <u>Declaration of Jorge Suarez</u> and Exhibits]** Honorable Kenly Kiya Kato United States District Judge

I. INTRODUCTION AND SUMMARY

Petitioner Patrik Nazarian, an Iranian national who is subject to a final removal order, was detained on June 24, 2025. *See* Petitioner's application for a temporary restraining order ("TRO Application"); Declaration of Jorge Suarez ("Suarez Decl.") ¶ 17.

Petitioner argues that the government previously released him, and that the government did not comply with the procedural requirements of 8 C.F.R. § 241.13(i) in revoking his release and re-detaining him. TRO Application at 12, 13-18. Aside from being factually inaccurate, Petitioner fails to make any evidentiary showing of a putative re-detention violation that would justify immediate habeas release. To the contrary, other courts have recognized that complaining that the reasons for revocation of supervised release are insufficient is not nearly enough to establish entitlement to the extraordinary remedy of a TRO. *See* Exhibits A, B, C attached hereto. Moreover, such courts have recognized that while regulations such as 8 C.F.R. § 214.13(i) create procedural safeguards, they do not create independent substantive rights that override the statutory grant of detention authority. Exh. B (*Sanchez v. Bondi et al.*, 5:25-cv-02530-AB-DTB, Dkt. 12).

Although Petitioner next complains that he does not want to be removed to a third country, it is undisputed that the government has requested travel documents to Iran. Suarez Decl. ¶ 20. And beyond generally citing the government's policies regarding third country removal, Petitioner presented no evidence that he in fact faces removal to a third country. *See* TRO Application at 18-19. The undisputed evidence is to the contrary, as ICE requested travel documents from Iran and there are no cognizable barriers to removal to Petitioner's home country. Indeed, changed political circumstances have now made Iranian deportations possible. See, e.g. https://www.bbc.com/news/articles/cgrql7gd10do.

The TRO Application should be denied.

II. FACTUAL BACKGROUND

Petitioner is an Iranian national who entered the United States in 2001. Suarez Decl. ¶¶ 3-4. In July 2013, Petitioner was convicted of felony possession of a controlled substance *Id.* ¶ 5. In September 2013, Petitioner was convicted of felony burglary and grand theft of property, and sentenced to three years in prison. *Id.* ¶¶ 6-7.

In October 2014, a detainer was issued against Petitioner with a Notice to Appear. *Id.* ¶ 10. Petitioner was thereafter placed in removal proceedings and charged with a violation of INA section 237(a)(2)(A)(iii).[1] *Id.*

In November 2014, an Immigration Judge issued a final order of removal directing Petitioner's removal to Iran. *Id.* ¶ 11. Petitioner did not appeal that removal order. *Id.* In February 2015, Petitioner was placed on an Order of Supervision and released from immigration custody. *Id.* ¶ 13. In March 2017, Petitioner was arrested for robbery. *Id.* ¶ 14. In March 2018, a Notice of Revocation of Release was served to Petitioner and he was detained in immigration custody. *Id.* ¶ 15 In April 2018, Petitioner was again placed on an Order of Supervision and released from immigration custody. *Id.* ¶ 16.

On June 24, 2025, Petitioner was taken into immigration custody to effectuate his removal from the United States and transferred to the Adelanto ICE Processing Center where he remains today. *Id.* ¶ 17-18. In October 2025, a 90-day custody review was conducted and determined that continued detention was warranted because Petitioner is a flight risk. *Id.* ¶ 19.

III. STANDARD OF REVIEW

Courts have recognized very few circumstances justifying the issuance of an *ex parte* temporary restraining order. *See Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). A TRO is "an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*,

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[1] 8 U.S.C. § 1227(a)(2)(iii) provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable."

555 U.S. 7, 20 (2008). Where a litigant seeks their ultimate relief by preliminary injunctive means, that is improper since "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

IV. ARGUMENT

A. Petitioner Has Not Shown That the Government Lacked Authority to Detain Him, That the Government Revoked His Release Improperly, And That the only Remedy for Such a Procedural Deficiency Would Be Ordering His Immediate Release from Detention.

Petitioner argues that he should not now be detained, despite conceding that he has a final removal order. But the INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231. When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Such detainees have due process protection; the Supreme Court has set forth the basic limitation, which is that after six months of post-removal order detention the burden shifts to the government to show that removal is possible. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, if a detained noncitizen is not removed within six months, the burden then shifts to the government to show it will remove them in a reasonably foreseeable time. Although that burden of persuasion shifts after six months, the noncitizen still "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*, 701. The *Zadvydas* standard for proving entitlement to release is high. Here, Petitioner does not attempt to make such a *Zadvydas* showing. And insofar as Petitioner's counsel vaguely suggests he may be detained indefinitely, Petitioner fails to explain (much less establish) how he would lack a remedy under *Zadvydas* if that excessively prolonged detention scenario arises.

Instead of addressing that point, Petitioner argues that there does not appear to be a good reason for his recent re-detention, given that he was previously released under an order of supervision. But the government's authority to re-detain individuals previously released by ICE is discretionary, and it does not require the type of intensive threshold evidentiary procedure that Petitioner suggests. The government is allowed to revoke for nearly any reason, and the process for any objections is exceedingly limited. "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original). Of course the post-removal detention period remains limited by *Zadvydas* principles, so it is certainly not unlimited, but the sufficiency of rationale for revocation is not subject to detailed interrogation and burden of proof via habeas petition.

The government is thus broadly authorized to exercise its discretion to revoke such release pursuant to 8 CFR § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.").

Petitioner complains here that he was not provided a notice of revocation. That is not a basis for filing a habeas petition, much less an *ex parte* TRO Application. Moreover, Petitioner argues that "ICE has not proven the person who revoked supervision was authorized to do so" per 8 C.F.R. § 241.4(l)(2). *See* TRO Application at 15.

Importantly, the appropriate remedy for any such procedural deficiency would not be automatic release from custody, but rather to remedy the specific procedural deficiency that might be established. Injunctive relief must be narrowly tailored to the wrong. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) ("And we note that even when there are deficiencies in individual § 1226(a) proceedings, they may be redressable through means short of major changes to the burden of proof.").

Other District Courts have correctly applied this point of remedy law. *In Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited redetention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

Here, Petitioner argues that any allegedly lacking aspect of revocation procedure or documentation means he should be immediately released. Petitioner argues that he has not received full assurances that all aspects of re-detention process were sufficient. But that demand is not consistent with the relatively limited nature of the regulatory provisions at issue, nor with the Ninth Circuit authority quoted above construing the government's very broad authority to revoke supervised release.

The Hon. Judge Blumenfeld recently denied a preliminary injunction motion in a somewhat similar case alleging a lack of sufficient re-detention process, noting that the evidentiary burden had not been met, and also that it was unclear that release would be the appropriate remedy for any violations of revocation procedure. *See Long Ton v. Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [Dkt. no. 17] (September 3, 2025) (Order Denying Application for Preliminary Injunction) (Exhibit A hereto).

The Hon. Judge Birotte Jr. likewise recently denied a TRO seeking to assert such a re-detention procedure challenge. *See Jose Angel Morales Sanchez v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB [Dkt. no. 12] (October 3, 2025 order denying TRO). (Exhibit B hereto). Indeed, much like Petitioner's argument here regarding the authority to revoke supervised release, the court noted that "[p]etitioner has not produced evidence showing that the SDDO lacked authority to revoke supervision or that ICE's procedures were fundamentally flawed. Even more, the absence of additional details regarding the identity of the SDDO or a formal interview, while potentially imperfect under the regulations, does not negate the statutory authority provided by § 1231(a)(2)–(6)."

B. Petitioner has not shown a likelihood of success on the merits because he has not established that "there is no significant likelihood of removal in the reasonably foreseeable future."

Showing a likelihood of success on the merits is a requisite threshold issue. Indeed, "when a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (cleaned up). To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Although Petitioner is being detained in this district, he has not shown, and indeed cannot show, that his current custody is unlawful.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). After that time, a noncitizen may request release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Here, Petitioner does not challenge the validity of his final removal order or that 8 U.S.C. § 1231(a)(6) governs his detention. Indeed, Petitioner chose not to appeal his final order of removal. Suarez Decl. ¶ 11. However, Petitioner seemingly argues, without evidentiary support, that he should be released from his current detention because removal to Iran is not reasonably foreseeable. TRO Application at 9. That contention is both factually incorrect and misapprehends the *Zadvydas* standard.

In *Zadvydas*, the Supreme Court instructed that detention for six months following a final removal order is presumptively valid.

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, 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.

Zadvydas, 533 U.S. at 701. Thus, according to *Zadvydas*, the noncitizen "may be held in confinement until it has been determined that there is ***no significant likelihood of removal in the reasonably foreseeable future.***" *Id.* (bold italic emphasis added).

Here, there is a significant likelihood that Petitioner will be removed to Iran in the reasonably foreseeable future. He was re-detained two months ago in June 2025. There is no bar against Petitioner's removal to his home country of Iran and the government is currently arranging for that removal. Suarez Decl. ¶¶ 20-22.

Courts therefore properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (where there is no evidence that the country of removal would refuse to accept the petitioner or that removal is barred by the laws of the United Sates, that the detention did not have a certain end date did not demonstrate that detention was "indefinite").

Because Petitioner has failed to establish a likelihood of success on his claims that his detention is unlawful, the petition should be denied.

C. Petitioner's Request for a TRO against Third Country Removal is Irrelevant and Unsupported by Any Evidence.

Petitioner next complains that he might face third country removal without notice. As discussed above, however, the government has taken steps to effectuate his removal to Iran, which is his home country, and the country of removal specified in his final (and unchallenged) order of removal. And to the extent he speculates that the government must nonetheless actually be intending instead to imminently remove him to a third country, Petitioner's counterfactual suggestion on that point is entirely baseless. Issuing a TRO should not be done for such speculative prophylactic purposes based on counterfactual scenarios.

D. Petitioner has not shown he will suffer irreparable harm absent a TRO.

Finally, Petitioner has not demonstrated that he will suffer irreparable injury absent his release. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). "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." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury, and submits the declarations of his family members who will be impacted by his continued detention and ultimately his removal.[2] However, the fact remains that Petitioner is subject to a final order of removal, which order he declined to challenge, and that the government has taken steps to effectuate his removal to his country of origin in the foreseeable future. Petitioner's re-detention is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting the emergency relief requested.

E. The Balance of Interests Favors the Government.

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]").

[2] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

This public interest outweighs Petitioner's private interest here. Petitioner asks the Court to declare his detention unlawful, despite the government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to valid final removal order that he does not challenge.

V. CONCLUSION

Petitioner's TRO Application should be denied.

Dated: October 30, 2025

Respectfully submitted,

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/s/ Randy Hsieh
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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondent, certifies that the memorandum of points and authorities contains 3,250 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 30, 2025

/s/ Randy Hsieh
RANDY HSIEH
Assistant United States Attorney

DECLARATION OF JORGE SUAREZ

I, Jorge Suarez, hereby declare:

1. I am employed as a Deportation Officer (DO) with the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), and am presently assigned to the ICE Adelanto Processing Center (the "APC") in Adelanto, California. I have been employed by DHS since November 26, 2017. The facts in this declaration are based on my personal and professional knowledge, consultation with other ICE personnel, and review of official documents and records maintained by the agency and Department and other relevant sources obtained during the regular course of business. I provide this declaration based on the best of my knowledge, information, belief, and reasonable inquiry for the above captioned case.

2. My responsibilities as a DO include the review of detained alien cases at the APC in Adelanto, California. As part of my duties, I reviewed the case of Patrik Nazarian (Nazarian).

3. The petitioner, Nazarian is a native and citizen of Iran.

4. On or about June 6, 2001, Nazarian was admitted to the United States at Los Angeles, California as a Lawful Permanent Resident under the classification of a child of a refugee.

5. On or about July 2, 2013, Nazarian was convicted in the Superior Court of California, County of Orange, for a felony offense of Possession of a Controlled Substance, to wit: Methamphetamine in violation of section 11377(a) of the California Health and Safety Code.

6. On or about September 9, 2013, Nazarian was convicted in the Superior Court of California, County of Los Angeles, for the offense of felony Burglary in violation of section 459 of the California Penal Code ("CPC").

7. On or about September 9, 2013, Nazarian was also convicted in the Superior Court of California, County of Los Angeles, for the offense of Grand Theft of

Property, in violation of section 487(A) of the CPC. He was sentenced to 3 years of incarceration.

8. On or about September 2, 2014, ICE encountered Nazarian while conducting record checks on incarcerated individuals due to his arrest for Burglary. ICE lodged an Immigration Detainer, Form I-247.

9. On or about October 23, 2014, the Immigration Detainer was honored and ICE arrested Nazarian upon release from jail.

10. On or about October 23, 2014, ICE served Nazarian with a Notice to Appear (NTA) in which he was charged with INA § 237(a)(2)(A)(iii) as having been convicted of an aggravated felony as defined in section 101(a)(43)(G) of the Act, a law relating to a theft offense for the term of imprisonment is at least one year and with INA § 237(a)(2)((B)(i), as having been convicted any time after admission of a violation of any law relating to a controlled substance.

11. On November 4, 2014, the Immigration Judge found Nazarian removable from the United States pursuant to INA § 237(a)(2)((B)(i). Nazarian did not apply for any relief from removal, and the Immigration Judge ordered him removed to Iran. Nazarian waived appeal of this decision.

12. On or about February 3, 2015, ERO conducted a custody review after Nazarian has been detained for 90 days, pending obtaining travel documents to effectuate his removal.

13. On or about February 3, 2015, ERO released Nazarian on an Order of Supervision, Form I-220B.

14. On or about March 20, 2017, Nazarian was arrested for Robbery in violation of section 212.5(c) of the CPC.

15. On or ab out March 23, 2018, ERO served a Notice of Revocation of Release on Nazarian and took him into custody to continue with efforts to obtain travel documents for removal.

16. On or about April 18, 2018, ERO released Nazarian from custody on an

Order of Supervision.

17. On or about June 24, 2025, ERO took Nazarian into custody in Los Angeles, California to effectuate his removal from the United States.

18. On or about June 26, 2025, ERO transferred Nazarian to the Adelanto ICE Processing Center where he remains today pending his removal from the United States.

19. On or about October 3, 2025, ICE conducted a 90-day custody review and determined that continued detention is warranted because Nazarian is a flight risk.

20. ICE is in the process of obtaining travel documents from Iran.

21. It is my understanding that the government of Iran has recently been issuing travel documents when ICE has made such requests. It is also my understanding that ICE has recently been able to timely obtain travel documents and effectuate removal to Iran

22. Based on the above information, ICE expects that a travel document for Nazarian will be issued and ICE will be able to effectuate his removal to Iran in the reasonably foreseeable future.

I declare, pursuant to 28 U.S.C. § 1746, under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 29, 2025, in Adelanto, CA.

Jorge Suarez
Deportation Officer
DHS/ICE/ERO
Adelanto, California