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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ezra Huber,

Petitioner,

v.

David R. Rivas, et al.,

Respondents.

No. CV-25-03826-PHX-SMB (JZB)

RESPONSE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Respondents David R. Rivas, Warden, San Luis Regional Detention Center; Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs Enforcement (ICE), Kristi Noem, Secretary of Department of Homeland Security (DHS), and Pamela J. Bondi, Attorney General of the United States, through undersigned counsel, respond in opposition to Petitioner's Motion for Preliminary Injunction (PI). Doc. 3. Petitioner Ezra Huber is subject to a final order of removal that became administratively final on April 3, 2025, following a prison sentence resulting from an assault conviction. The Court should deny Petitioner's request for injunctive relief because Petitioner's removal to Israel is imminent. Petitioner thus cannot establish a likelihood of success on the merits or irreparable harm, and the public interest and balance of equities favors the government.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner Ezra Huber (Petitioner) is a native and citizen of Israel. *See* Declaration of Jose Ruiz, Deportation Officer, attached as Exhibit A, at ¶ 4. Petitioner was admitted to the United States on May 17, 2004, as a non-immigrant using a B-2 Visitor visa with a duration of stay until November 17, 2004. *Id.* at ¶ 5, He remained in the United States beyond November 17, 2004, without authorization. *Id.* at ¶ 6. Records indicate Petitioner does not have any applications or petitions pending with United States Citizenship and Immigration Services (USCIS) and he was not granted lawful permanent residence status. *Id.* On September 10, 2024, Petitioner was convicted of Assault with a Firearm in violation of California Penal Code Section 245(a)(2) in California Superior Court. *Id.* at ¶ 7. He was sentenced to two years in prison. *Id.*

On February 25, 2025, Petitioner was released from California criminal custody and booked into ICE custody in Bakersfield, CA. *Id.* at ¶ 8. He was transferred to the San Luis Regional Detention Center in Arizona on July 17, 2025. *Id.* at ¶ 8. Petitioner was issued a Notice to Appear on February 25, 2025, charging him as removable under Section 237(a)(1)(B) of the Immigration and Nationality Act (INA), in that after admission as a nonimmigration under Section 101(a)(115) of the Act, he had remained in the United States for a longer time than permitted in violation of the Act. *Id.* at ¶ 9. On March 4, 2025, an Immigration Judge ordered Petitioner removed to Israel. *Id.* at ¶ 10. Petitioner did not appeal the removal order. *Id.* at ¶ 11. His removal order thus became administratively final 30-days later on April 3, 2025. *Id.*

Since Petitioner's removal order became final on April 3, 2025, ICE Enforcement and Removal Operations (ERO) has worked on obtaining a travel document and flight itinerary for the Petitioner to be removed to Israel. *Id.* at ¶ 12. In April of 2025, Petitioner relayed to ERO that he was having his Israeli passport sent to him from his family in Israel. *Id.* at ¶ 13. On or about May 6, 2025, Petitioner informed ERO that he did not have any travel documents, which caused ERO to begin the process of requesting travel documents. *Id.* at ¶ 14. On October 10, 2025, ERO obtained travel documents from the Israeli Embassy

for the Petitioner. *Id.* at ¶ 15. ERO then began the process of finding and booking a removal flight. *Id.* On October 20, 2025, ERO was able to confirm a flight and removal date for the Petitioner set to occur next month, in November 2025. *Id.* at ¶ 16. ERO served Petitioner with a Notice of Imminent Removal on October 20, 2025. *Id.* at ¶ 17. He is scheduled for imminent removal to Israel. *Id.*

In his request for a PI, Petitioner asserts that his detention violates his due process rights under the Fifth Amendment, and claims that Respondents have "been unable to process travels documents to facilitate Mr. Huber's return to Israel while he has been detained." Doc. 3 at 2. Respondents deny these allegations and assert that his removal is significantly likely to occur within the reasonably foreseeable future, as noted above.

II. PRELIMINARY INJUNCTIONS STANDARD.

An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24. Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22.

Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits'

and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioners carry a "heavy" burden. *Id.*

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

III. ARGUMENT.

A. Standard Governing Detention of Aliens Pending Removal.

The detention, release, and removal of aliens subject to a final order of removal is governed by § 241 of INA, 8 U.S.C. § 1231. Under the INA § 241(a), the Attorney General has 90 days to remove an alien from the United States after an order of removal becomes final. During this "removal period," detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been removed and remains in the United States, his detention

may be continued, or he may be released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3) and (6). Under this section, ICE may detain an alien for a "reasonable time" necessary to effectuate the alien's deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not authorized. *Id.*

In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable period of time to allow the government to remove an alien detained under 8 U.S.C. § 1231(a)(6), but an alien is not entitled to release after six months detention. *Id.* at 701 ("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.") (emphasis added). The passage of time alone is insufficient to establish that no substantial likelihood of removal exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In *Lema,* where the petitioner had been detained for more than a year, the district court held that the passage of time was only the first step in the analysis, and that the petitioner must then provide good reason to believe that no significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

Here, Petitioner became subject to a final order of removal on April 3, 2025, and thus his detention, which is not prolonged, is governed by 8 U.S.C. § 1231 and *Zadvydas*. *See* 8 U.S.C. 1231(a)(1)(B); *Zadvydas*, 533 U.S. at 688-89. Additionally, noting the six-month presumptively reasonable period of detention as outlined under *Zadvydas*, Petitioner's length of detention is only slightly over the six-month threshold, and as noted below, his removal to Israel is imminent. Ex. A at ¶¶ 8, 12-17.

B. Petitioner Has Not Met His Burden to Establish There Is No Substantial Likelihood of Removal in the Reasonably Foreseeable Future.

Zadvydas places the burden on the alien to show, after a detention period of six months, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the alien makes that showing,

only then does the burden shift to the Government to show that removal is substantially likely in the reasonably foreseeable future. *Id.*

Petitioner has not met his burden. He merely asserts that Respondents "been unable to process travels documents to facilitate Mr. Huber's return to Israel while he has been detained," Doc. 3 at 2, and points to past communications indicating that ICE "had paid the Israeli Embassy the required fee for issuing Mr. Huber's passport" around September 2025. Doc. 1 at 4. Even if Petitioner had met his burden showing that his removal is not likely to occur within the reasonably foreseeable future, which he has not, the Government refutes his assertions showing recent efforts to effectuate his imminent removal. Since Petitioner's removal order became administratively final on April 3, 2025, ERO has obtained travel documents, confirmed a flight, and removal plans for the Petitioner within the next month. Ex. A at ¶ 16. ERO served Petitioner with a Notice of Imminent Removal on October 20, 2025. *Id.* at ¶ 17. He is scheduled for imminent removal to Israel. *Id.* Based on the foregoing, Petitioner's continued detention is not indefinite and remains both authorized and constitutional to effectuate his return to Israel.

IV. A PRELIMINARY INJUNCTION IS NOT WARRANTED.

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

A. Petitioner Cannot Establish a Likelihood of Success on the Merits.

The Court should deny Petitioner's request for preliminary injuction because Petitioner "must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir.

1988). The "possibility" of injury is "too remote and speculative to constitute an irreparable injury meriting preliminary injunctive relief." *Id.* "Subjective apprehensions and unsupported predictions . . . are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable harm." *Id.* at 675-76.

For all the reasons argued above, Petitioner cannot establish a likelihood of success on the merits of his habeas petition. ERO has obtained travel documents and served Petitioner with a Notice of Imminent Removal on October 20, 2025. Ex. A at ¶ 17. He is scheduled for imminent removal to Israel within the next month. *Id.* Therefore, Petitioner is not entitled to injunctive relief.

B. Plaintiff Cannot Establish Irreparable Harm.

To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. The only claim Petitioner makes with respect to irreparable harm is that his "illegal confinement is quintessentially irreparable harm." Doc. 3 at 2. To show harm, a movant must allege that concrete, imminent harm is likely with particularized facts. *Winter*, 555 U.S. at 22. As established above, Petitioner cannot establish any irreparable harm from his continued detention while the Government executes his removal order. This factor weighs in favor of the Government.

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 convicted criminal aliens detained pending execution of their removal orders. Here, Petitioner has been issued a Notice of Imminent Removal. Ex. A at ¶ 17. The public interest lies in

keeping Petitioner detained to effectuate removal which is the undergirding statutory purpose of 8 U.S.C. § 1231, especially here, where removal is legitimately imminent.

V. CONCLUSION.

For the reasons set forth in this Response, the Motion for a Preliminary Injunction should be denied.

Respectfully submitted on October 31, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 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:

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s/M. Finlon
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