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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Saied Salimitari,

Petitioner,

v.

David R. Rivas, *et al.*,

Respondent

No. CV-25-03991-PHX-SMB-MTM

RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION (DOC. 3)

I. INTRODUCTION.

David R. Rivas, Warden, San Luis Regional Detention Center; Gregory J. Archambeault, San Diego Field Office Director, U.S. Immigration and Customs Enforcement; Pamela Jo Bondi, Attorney General of the United States; and Kristi Noem, Secretary of the Department of Homeland Security, ("Respondents"), by and through undersigned counsel, respond in opposition to Petitioner's Motion for Preliminary Injunction ("PI") (Doc. 3).

II. FACTUAL BACKGROUND.

Petitioner, Saied Salimitari, a native and citizen of Iran, entered the United States as a visitor on or about January 1, 1979. Exhibit A, ¶ 5, Declaration of Jose J. Ruiz, Deportation Officer (DO) for San Diego CA Field Office, El Centro, CA sub-Office, U.S.

Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). On September 5, 1980, he became a Legal Permanent Resident (LPR) under A [redacted] as a child of a sibling of a United States Citizen. Petitioner's status as an LPR was rescinded on November 8, 1984. *Id.* On June 12, 1984, Immigration and Naturalization Service (INS) determined that Petitioner obtained that status through fraud; namely, his mother did not have the claimed sibling relationship. *Id.*

Under [redacted], Petitioner applied for and was granted temporary residence based on his Application for Status as a Temporary Resident, filed on May 4, 1988. *Id.* ¶ 6. In it he claimed he entered the United States on January 1, 1979, on a B-2 Visa, which expired on March 26, 1979. *Id.* On May 3, 1989, Petitioner received temporary resident status under section 245A of the Immigration and Nationality Act (INA). *Id.*

On December 6, 1990, Petitioner filed an application to adjust status from temporary to permanent residence status under [redacted]. *Id.* ¶ 7. At the time Petitioner was granted temporary residence status, his relating file of [redacted] was not consolidated with [redacted]. *Id.* After the files were consolidated, a review of the complete record showed that Petitioner was not eligible for temporary residence status. *Id.* ¶ 8. USCIS later consolidated the two files with the primary A-number being [redacted]. *Id.*

On September 27, 2012, USCIS denied Petitioner's application to adjust his status to permanent residence status due to his criminal history and other ineligibility criteria. *Id.* ¶ 9. The denial letter issued by USCIS specifically identified Petitioner's criminal history. *Id.* ¶ 10.

On October 21, 2002, Petitioner was convicted in the State of Texas at the Collin County Court for the offense of assault in violation of section 22.01 of the Texas Penal Code and sentenced to 364 days of confinement, $1,000 fine, two years community supervision, sentence suspended. *Id.* ¶ 11. On October 21, 2002, he was also convicted of misdemeanor violation of a protective order, Texas Code of Civil Procedure section 17.297. *Id.* On March 21, 2003, Petitioner was convicted of misdemeanor assault causing bodily injury/family member (TX P.C. sec. 22.01) and sentenced to 270 days confinement.

Id. On March 21, 2003, he was also convicted of misdemeanor violation of a protective order, and misdemeanor interfering with an emergency phone call. *Id.* He was sentenced to 270 days confinement. *Id.* ¶ 12. While incarcerated in 2003, Petitioner was the subject of an investigation for confiding in another inmate that he was going to kill Assistant District Attorney Wilson, several Frisco Police Officers, and his former wife. *Id.* ¶ 14.

On May 2, 2003, Petitioner was served with an NTA wherein he was charged with removability under INA § 237(a)(2)(E)(i) (Crime of Domestic Violence); INA § 237(a)(2)(E)(ii) (Violation of a Protective Order); and INA § 237(a)(1)(B) (Remained in the United States for a Time Longer Than Permitted). *Id.* ¶ 13. Petitioner was detained at Rolling Plains Detention Center in Haskell, Texas from October 20, 2003, to November 19, 2003. *Id.* ¶ 15. He was transferred to Dallas County Jail-Lew Sterrett where he was held from November 19, 2023, to March 24, 2004. *Id.* He was returned to Rolling Plains Detention Center from March 24, 2004, until October 24, 2005. *Id.*

On November 29, 2004, the immigration court found Petitioner removable as charged, and he accepted a removal order to Iran and waived appeal. On October 24, 2005, Petitioner was released with an order of supervision. *Id.* ¶ 16. Petitioner thereafter failed to leave the country pursuant to that removal order. *Id.* In August 2009, Petitioner filed a motion to reopen, claiming that the June 12, 2009, Iranian election constituted changed country conditions. *Id.* Petitioner included an I-589 application for asylum and withholding of removal with his motion. *Id.* The immigration court denied his motion. Petitioner appealed to the BIA and on April 28, 2011, the Board reopened his proceedings and remanded the case back to the immigration judge. *Id.* ¶ 17.

In April 2013, DHS filed a Form I-261, adding three additional factual allegations concerning the termination of temporary resident status without introducing new charges. *Id.* ¶ 18. On October 21, 2014, an immigration judge ordered Petitioner removed in absentia. *Id.* ¶ 19. On September 15, 2015, Petitioner filed a motion to reopen that was granted on October 21, 2016. *Id.* During hearings spanning between 2017 and 2018, Petitioner and two witnesses testified in support of his I-589 application for asylum and

withholding of removal. *Id.* ¶ 20. On April 16, 2019, the immigration court issued a written decision denying all relief and ordering Petitioner removed to Iran. *Id.* In this written decision, the immigration judge determined that Petitioner was not a credible witness. *Id.*

On July 17, 2025, Petitioner arrived for his scheduled office visit with ICE/ERO San Diego Non-Detained Unit. *Id.* ¶ 21. He was taken into custody and processed in San Diego, California. *Id.* On August 5, 2025, Petitioner was transferred to the San Luis Regional Detention Center in San Luis, Arizona. *Id.* As of the date of this declaration, Petitioner is in custody at San Luis Regional Detention Center. *Id.*

Petitioner refused to cooperate in providing information to request an Emergency Travel Document. *Id.* ¶ 22. On October 22, 2025, DO Ruiz interviewed Petitioner with the form I-217 Information for Emergency Travel Document or Passport. *Id.* Petitioner would not fill out the form and instead stated that he was going to contact his lawyer before providing that information. *Id.* DO Ruiz left him the form I-217, told him to fill it out and that he would return in a couple of days. *Id.* On October 24, 2025, DO Ruiz interviewed Petitioner once again to obtain the information needed for his Emergency Travel Document. *Id.* ¶ 23. Petitioner returned the form I-217 to him blank. *Id.* Petitioner stated that he didn't call his lawyer, and he was not going to provide the requested information. *Id.* On October 24, 2025, DO Ruiz served Petitioner with a Failure to Comply form which he also refused to sign. *Id.*

As an alien who has been ordered removed based on removability under INA § 237(a)(2), 8 U.S.C. § 1227(a)(2), Petitioner is currently detained pursuant to INA § 241(a)(6), 8 U.S.C. § 1231(a)(6), pending execution of his administratively final order of removal to Iran. *Id.* ¶ 24.

III. LEGAL FRAMEWORK FOR PRELIMINARY INJUNCTION.

The substantive standard for 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). Petitioner's burden is aptly described as a "heavy" one. *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 orders a responsible party to take action. . . . 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).

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

A. Petitioner is not likely to succeed on the merits, nor has he raised serious questions going to the merits of his claims.

1. Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6).

Petitioner relies on the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001), to allege a violation of his constitutional rights. Ordinarily, once an alien has been ordered removed, the Government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly referred to as the "removal period." However, another provision, 8 U.S.C. § 1231(a)(6), permits detention of an alien after the removal period for certain categories of aliens. Although the post-removal-period detention statute contains no time limit on detention, in *Zadvydas*, the Supreme Court explained that the Fifth Amendment's Due Process Clause "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States. It does not permit indefinite detention." 533 U.S. at 689.

To avoid reading the statute as violating the Fifth Amendment Due Process Clause and to create uniform standards for evaluating challenges to post-removal-period detention, the Supreme Court held that any detention of six months or less was a "presumptively reasonable period of detention," and 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 701. Conversely, the Court also held that "[a]fter 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." *Id.*

The purpose of § 1231(a)(6) detention is to effectuate removal. *See Demore v. Kim*, 538 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining the removal period was based on the "reasonably necessary" time in order "to secure the alien's removal"). The statute provides that—if the alien is not removed—the alien "shall be subject to supervision" under relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). Here, Petitioner has been detained for approximately four months while the Government attempts to execute his valid final removal order to Iran.. His continued detention, while the Government seeks to effectuate his removal and enforce a valid removal order, violates neither section 1231 nor *Zadvydas*. 533 U.S. at 689.

To be entitled to realease, it is Petitioner's burden to establish that there is no likelihood of removal in the reasonably foreseeable future to warrant release under *Zadvydas*. *See Zadvydas*, 533 U.S. at 689. Petitioner claims incorrectly that removals to Iran are not possible due to a lack of formal government relations. In fact, recent removals to Iran have taken place.[1] Four months is simply insufficient time to establish that the Government is unable to effectuate Petitioner's removal in the reasonably foreseeable future. *Id.*

Critically, Petitioner is unable to establish that there is no significant likelihood of his removal to Iran, where he has failed to cooperate with the process of obtaining trable documents to Iran. (cite to declaration and insert facts). In Pelich v. INS, 329 F.3d 1057, 1057 (9th Cir.2003), the Court held that, notwithstanding Zadvydas, the statutory exception of 8 U.S.C. § 1231(a)(1)(C)(the provision at issue here) authorizes the government to continue detaining an alien whose refusal to apply in good faith for travel documents prevents it from removing him from the United States. The Ninth Circuit explained that the risk of indefinite detention that motivated the Supreme Court's statutory interpretation

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[1] See, e.g., https://www.nytimes.com/2025/09/30/world/middleeast/us-iran-deportation-flight.html (accessed November 7, 2025).

in Zadvydas does not exist when the alien "has the keys [to freedom] in his pocket and could likely effectuate his removal by providing the information requested by the INS." *See Pelich*, 329 F.3d at 1060 (internal quotation marks omitted). We held that a "detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock." *Id.*

In *Lema v. INS*, the Ninth Circuit held that when an alien refuses to cooperate fully and honestly with officials to secure travel documents from a foreign government, the alien cannot meet his or her burden to show there is no significant likelihood of removal in the reasonably foreseeable future. Lema v. I.N.S., 341 F.3d 853, 856–57 (9th Cir. 2003). They held that "[w]e cannot know whether an alien's removal is a "remote possibility," Zadvydas, 533 U.S. at 690, until the alien makes a full and honest effort to secure travel documents." Indeed, "a particular alien may have a very good chance of being removed, but if that alien is refusing to cooperate fully with officials to secure travel documents, neither the INS nor a court can sensibly ascertain the alien's chance of removal." Finally, the Court held in Lema, that "the due process concerns that motivated the Supreme Court in *Zadvydas* do not apply when an alien may have "the keys [to freedom] in his pocket." See Pelich, 329 F.3d at 1060 (internal quotation marks omitted). Accordingly, the Ninth Circuit held that "8 U.S.C. § 1231(a)(1)(C) authorizes continued detention of a removable alien so long as the alien fails to cooperate fully and honestly with officials to obtain travel documents. *Lema*, 241 F.3d at 856-57.

2. The Government has no plans to remove Petitioner to any third country.

This Court has no jurisdiction to entertain an action when the petitioner lacks standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). A petitioner lacks standing when their suit is not grounded in an "actual or imminent" injury. Id. Although "an allegation of future injury may suffice" for standing purposes, the threatened injury must be "certainly impending," or there must be a "substantial risk that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (quoting Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409, 414 n.5 (2013)). The Government has no current

plan to remove Petitioner to any other country other than Iran. Petitioner has not shown and cannot show that he is at substantial risk of removal to a third country, so this Court has no jurisdiction to grant relief based on the pure speculation that he might be.

B. Petitioner cannot meet his burden to show irreparable harm.

The Court should deny Petitioner's Motion, 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.

Petitioner's contentions regarding the possibility of removal to a third country do not "rise to the level of "'immediate threatened injury' that is required to obtain a preliminary injunction." *Slaughter v. King County Corr. Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16, 2008) ("Plaintiff's argument of possible harm does not rise to the level of 'immediate threatened injury'"). Petitioner argues that any continued detention will be detrimental to him because the conditions in immigration facilities are known to be bad, and his detention will irreparably harm his U.S. Citizen friends and family. But "there is no constitutional infringement if restrictions imposed" are "but an incident of some other legitimate government purpose." *Slaughter*, 2006 WL 5811899, at *4 (citing, *e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). "In such a circumstance, governmental restrictions are permissible." *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 747, (1987)).

Petitioner cannot show that denying the motion for PI would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must] demonstrate that irreparable injury is *likely* in the absence of an injunction.") (emphasis in original). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote

future injury." *Id.* "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention and provided a pre-detention hearing.

C. The equities and public interest do not favor Petitioner.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "In 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).

An adverse decision here would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws." *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 a legitimate 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.").

While it is in the public interest to protect constitutional rights, if, as here, the 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). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's admitted participation in violent crimes , the public and governmental interest in permitting his detention is significant. Thus, Petitioner has not established that he merits

a preliminary injunction.

V. CONCLUSION

Every habeas corpus petition necessarily alleges the same basic ground for relief, *i.e.,* that the petitioner is detained in violation of the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that exceptional circumstances require immediate review of a petitioner's claims will consideration of his petition be advanced at the expense of prior, pending petitions. Upon the current record, it is not plain that the merits of Petitioner's claims are so strong as to warrant expedited adjudication and Petitioner is not likely to succeed on the merits of his claim. *See In re Roe,* 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of whether a district court has the authority to release a prisoner pending resolution of a habeas case, but holding that if such authority does exist, it can only be exercised in an "extraordinary case involving special circumstances"). Accordingly, Petitioner's Motion for Preliminary Injunction should be denied.

RESPECTFULLY SUBMITTED November 7, 2025.

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