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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Carlos Yaser Barakat,

Petitioner,

v.

Unknown Party, *et al.*

Respondents.

No. CV-25-04138-SMB-CDB

RESPONSE TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION.

Respondents, through undersigned counsel, hereby respond to Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 7) and to the Petition for a Writ of Habeas Corpus (Doc. 1). Petitioner has a valid, final and executable removal order. His removal is scheduled to occur before the end of the month. Petitioner cannot possibly establish that his removal is not likely to occur in the reasonably foreseeable future, where it is scheduled to occur in less than two weeks. Therefore, the Court should deny the Petition and Motion because Petitioner is lawfully and constitutionally detained in order to effectuate his imminent removal pursuant to his valid final removal order.

II. FACTUAL BACKGROUND.

Petitioner, Carlos Yaser Barakat, is a native and citizen of Syria, born on [redacted], in Homs, Syria. Exhibit A, Declaration of Deportation Officer Edmundo Galvan, ¶ 4. On May 21, 2023, the United States Customs and Border Protection (CBP) encountered Petitioner seven miles east of Calexico, California. *Id.* ¶ 5. CBP determined Petitioner had unlawfully entered the United States from Mexico. *Id.* Petitioner was placed in expedited removal proceedings and on June 1, 2025, he received a credible fear interview with an asylum officer. *Id.* ¶ 6. The asylum officer determined that Petitioner did not establish a credible fear of return to Syria. *Id.* On June 30, 2023, an immigration judge (IJ) reviewed the asylum officer's credible fear determination and agreed that Petitioner could not establish a credible fear of return to Syria. *Id.* ¶ 7. Accordingly, the IJ issued Petitioner a final removal order to Syria. *Id.*

On July 22, 2023, Petitioner was issued an order of supervision and released from immigration detention four days later, on July 26, 2023. Exhibit A ¶¶ 8-9. On June 27, 2025, Petitioner reported for a check-in in accordance with his order of supervision and was arrested pursuant to his valid final removal order. *Id.* ¶ 10. On July 1, 2025, Petitioner was transferred to the Eloy Detention Center in Eloy, Arizona. *Id.* ¶ 11. Petitioner's removal from the United States has been scheduled and he is set to be removed to Syria at the end of November 2025. *Id.* ¶ 12.

III. THE HABEAS PETITION SHOULD BE DENIED.

A. Petitioner's detention is statutorily authorized and constitutional.

Petitioner cannot prove there is no significant likelihood of removal in the reasonably foreseeable future where, as here, his removal from the United States has been scheduled to occur by the end of the month. Exhibit A ¶ 12.

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. 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 less than five months while the Government attempts to execute his valid final removal order to Syria. His continued detention, while the Government seeks to effectuate his removal and enforce a valid final removal order, violates neither section 1231 nor *Zadvydas*. 533 U.S. at 689.

To be entitled to release, it is Petitioner's burden to establish that there is no likelihood of removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 689. Petitioner claims incorrectly that removals to Syria are not possible due to a lack of formal government relations. But here, the government has been able to schedule Petitioner's

flight back to Syria. Exhibit A ¶ 12.

Petitioner has only been detained approximately five months and because he is scheduled to be removed within two weeks, he cannot establish his removal is not likely in the reasonably foreseeable future sufficient to warrant release under *Zadvydas*. His detention is both statutorily authorized and constitutional. The court should deny the petition.

B. Petitioner was not entitled to a hearing prior to his re-detention.

The Due Process Clause did not prohibit ICE from re-detaining Petitioner without a pre-detention hearing. Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a pre-detention hearing. *See generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. For this Court to read one into the immigration custody statute would be to create a process that the current statutory and regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process protections attach.

Petitioner's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced. *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472–73. It did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 481. In addition, the "[c]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function." *Id.* Under these circumstances, Petitioner does not have a cognizable liberty interest in a pre-detention hearing, but even assuming he had one, it would be reduced based on the immigration context.

The procedural process provided to Petitioner, when he was re-detained, is constitutionally adequate under the circumstances and no additional process is required. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the [Fifth Amendment]

Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of [procedural] due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

To determine whether procedural protections satisfy the Due Process Clause, courts consider three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

The first factor favors Respondents. The Supreme Court has long recognized that due process as applied to aliens in matters related to immigration does not require the same strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when exercising its "broad power over naturalization and immigration, Congress regularly makes rules regarding aliens that would be unacceptable if applied to citizens." *Diaz*, 426 U.S. at 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are subject to limitations not applicable to citizens. 538 U.S. at 522 (citing Zadvydas, 533 U.S. at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the individuals subject to immigration detention possess at least a limited liberty interest, it has also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner's liberty interest is less than that at issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-detention hearing.

The second *Mathews* factor also favors Respondents. Under the existing procedures, aliens including Petitioner face little risk of erroneous deprivation. As explained above, there is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably authorizes Petitioner's detention to execute his final removal order and ICE is required to give Petitioner additional procedures under the Post Order Custody Review Regulations in

8 C.F.R. § 241.4. These regulations require periodic custody reviews in which Petitioner will have the opportunity to submit documents in support of his release, including documentation about flight risk and dangerousness. *See generally* 8 C.F.R. § 241.4(e)-(f) (listing factors to be considered in custody determinations). These procedures are more than adequate and unquestionably provide Petitioner notice and opportunity to be heard during his detention.

The third *Mathews* factor—the value of additional safeguards relative to the fiscal and administrative burdens that they would impose—weighs heavily in favor of Respondents. As previously explained, Petitioner's proposed safeguard—a pre-detention hearing—adds little value to the system already in place in which he will receive periodic reviews to ensure his removal remains reasonably foreseeable and in which the entire purpose of his detention is to effectuate his removal. Petitioner's proposed safeguard would disrupt the removal process. Because the hearing Petitioner proposes would, by definition, involve a non-detained individual, there would be hurdles to efficiently scheduling a hearing. There is no administrative process in place for giving an alien with a final order of removal a hearing resembling a bond hearing before an immigration judge. Petitioner's proposed safeguard presents an unworkable solution to a situation already addressed by the current procedures. *See* 8 C.F.R. § 241.4.

Respondents recognize that Petitioner is making an individualized challenge here. However, the additional procedure he requests would have a significant impact on the removal system. It would require ICE and the Executive Office of Immigration Review to set up a novel administrative process for Petitioner who—for all intents and purposes—represents a large portion of the final order alien population. Therefore, considering all of the *Mathews* factors together, due process does not require a pre-detention hearing.

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

A. Legal Standard.

A temporary restraining order ("TRO") should be granted to "preserv[e] the status quo and prevent[] irreparable harm just so long as is necessary to hold a hearing and no

longer." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). A petitioner must show "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" to receive a TRO or a preliminary injunction. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the "analysis is substantially identical for [an] injunction and [a] TRO"). Injunctive relief is "an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 9. A TRO normally lasts for no longer than fourteen days, but a court may extend a TRO's duration for an additional fourteen days "for good cause." FRCP 65(b)(2). However, a TRO may not last longer than 28 days unless the adverse party consents. *Id.*; *see also H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 844 ("[T]he great weight of authority support the view that 28 days is the outer limit for a TRO without the consent of the enjoined party. . . ."). The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

B. Petitioner is not likely to succeed on the merits.

Petitioner requests that this Court order his immediate release. As argued in Section III above, Petitioner's habeas petition should be denied. For these same reasons, Petitioner cannot show that he is "likely to succeed on the merits," as is required for injunctive relief. *Winter*, 555 U.S. at 20. Thus, this Court should issue neither a temporary restraining order nor a preliminary injunction.

C. Petitioner cannot establish 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 cannot show that denying the temporary restraining order 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 where he is lawfully and constitutionally detained pursuant to a final executable removal order and will be removed shortly.

D. 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 the petitioner has not shown a likelihood of success on the merits of that claim—as Petitioner has not shown here—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.").

V. CONCLUSION.

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 7).

RESPECTFULLY SUBMITTED November 19, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2025, I electronically transmitted the attached documents by ECF to:

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