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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nader Eshaghian,

Petitioner,

v.

Chris Howard, *et al.*,

Respondents.

No. CV-25-04141-DWL (ASB)

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

Respondents, by and through counsel, respond to the Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Preliminary Injunction (Doc. 3). Petitioner Nader Eshaghian is a citizen and national of Iran and a criminal alien convicted of numerous criminal offenses, including drug trafficking, spousal assault, and assault with a deadly weapon. After his first few convictions, an immigration judge ordered that he be removed to Iran. Petitioner was most recently detained by U.S. Immigration and Customs Enforcement ("ICE") on July 7, 2025, because ICE determined that his removal would occur in the reasonably foreseeable future. In this habeas petition, Petitioner seeks a Court order directing ICE to immediately release him from immigration detention. Respondents

respectfully request that this Court deny the Petition and Motion because Petitioner has not been unconstitutionally detained, and he cannot establish that his removal is not likely to occur in the reasonably foreseeable future. For these reasons, which are explained fully below, the Court should deny the Petition and Motion.

II. FACTUAL BACKGROUND

Petitioner entered the United States on November 28, 1974. Declaration of Sergio Cabrera, Deportation Officer, Enforcement and Removal Operations, attached as Exhibit A, at ¶ 3. Petitioner was granted lawful permanent resident status in 1978. *Id.* at ¶ 4. Petitioner was subsequently convicted in state court of numerous offenses, including possession for sale of cocaine (1990) and possession of narcotics (1990 and 1991). *Id.* at ¶¶ 5–8. The Immigration and Naturalization Service ("INS") began removal proceedings against Petitioner on April 2, 1993, under Immigration and Nationality Act ("INA") sections 241(a)(2)(A)(iii) and 241(a)(2)(B)(i). *Id.* at ¶ 9. On August 1, 1995, an immigration judge ordered Petitioner removed to Iran. *Id.* at ¶ 11. Petitioner was released from immigration detention on bond prior to his removal, and while he was out of detention, he was convicted of additional crimes, including evading arrest while driving recklessly[1] (1997) and solicitation (1998). *Id.* at ¶¶ 14, 16. INS detained Petitioner again on June 23, 1999. *See id.* at ¶ 17. On November 29, 2000, INS released Petitioner on an order of supervision. *Id.* at ¶ 21. While Petitioner was out of immigration custody this time, he was convicted of still more crimes, including inflicting corporal injury on his spouse (2002), possession of a controlled substance (2004) and threatening to commit a crime with intent to terrorize (2004). *Id.* at ¶¶ 23–24, 26. Petitioner was placed into immigration custody again On August 26, 2005, and again he was granted supervised release on January 12, 2006. *Id.* at ¶¶ 27–28. While Petitioner was out of immigration custody this time, he continued to commit crimes, including assault with a deadly weapon with a likelihood of causing grievous bodily injury (2010). *Id.* at ¶¶ 29–31. Petitioner was most recently placed into immigration custody on July 7, 2025, and ICE promptly requested travel documents

[1] *See* Cal. Vehicle Code § 2800.2.

from Iran. *Id.* at ¶¶ 33–35. Iran conducted a consular interview with Petitioner on October 31, 2025, and all that remains is for Iran to issue travel documents. *Id.* at ¶¶ 38, 40. There are no legal impediments to Petitioner's removal to Iran. *Id.* at ¶ 40.

III. THE HABEAS PETITION SHOULD BE DENIED

A. Legal Standard.

Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001) because his removal is not "reasonably foreseeable." An alien who is ordered removed must be detained for 90 days once their removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien has not left the United States voluntarily or been removed during this 90-day period, the alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). However, an alien ordered removed under INA § 241(a)(2) may be detained for a longer period. 8 U.S.C. § 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas*, 533 U.S. at 689. An alien may be detained for up to six months pursuant to a final order of removal, after which, the alien may be released if they can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and the government fails to show otherwise. *Id.* at 701. At that time, an alien is not presumed to be entitled to release; the alien must show that their detention is "indefinite—i.e., that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701) (internal quotation marks removed). This six-month period includes the initial 90-day mandatory detention period and three months thereafter. *Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

Petitioner may only be granted release from detention if he can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar when no country would agree to accept the alien or when the alien's home country had no repatriation treaty with the United States, *id.* at 686, when the government "concede[d] that

it [was] no longer even involved in repatriation negotiations" with the alien's home country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and when the alien had been detained for five years and had "won relief at every administrative level." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its holding in *Zadvydas* was concerned with detention that is "indefinite and potentially permanent," and for aliens whose removal is "no longer practically attainable." *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact that an alien's detention "lacks a certain end date" does not render their detention unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). The "likelihood of successful future negotiations" to repatriate an alien may justify continued detention. *See Zadvydas*, 533 U.S. at 702. Further, "mere delay in the issuance of a travel document is insufficient" to justify relief under *Zadvydas* "particularly where . . . efforts to obtain the travel document are ongoing." *Nasr v. Larocca*, 2016 U.S. Dist. LEXIS 90343 at *11–12 (C.D. Cal. June 1, 2016); *see also Roe v. Oddo*, 2025 U.S. Dist. LEXIS 214463 at *20–26. (W.D. Pa. Oct. 30, 2025); *Chen v. Banike*, 2015 U.S. Dist. LEXIS 105145 (D. Minn. July 14, 2025), *R&R adopted at* 2015 U.S. Dist. LEXIS 104914 (Aug. 11, 2015) ("For there to be no significant likelihood of removal in the reasonably foreseeable future, there must be some indication that the government is either unwilling to remove an alien or incapable of doing so due to seemingly insurmountable barriers[.]"); *Smith v. Simon*, 2019 U.S. Dist. LEXIS 148526 at *10–11 (holding that *Zadvydas* requires a petitioner to show "something more than the mere passage of time" and "something more than speculation and conjecture") (internal quotation marks omitted); *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346 at *12–13 (D. Minn. Mar. 17, 2015) (collecting cases).

A petitioner entitled to release under *Zadvydas* "may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700. If a petitioner is granted supervised release and violates a condition of release, the petitioner "may no doubt be returned to custody[.]" *Id.* Further, "if removal is reasonably foreseeable, the habeas court should consider the risk of the

alien's committing further crimes" as a factor that may justify continued detention. *Id.*

Respondents requested travel documents from Iran for Petitioner on July 7, 2025. Exhibit A at ¶ 32. On October 31, 2025, Iran granted Petitioner a consular interview, *id.* at ¶ 38. This demonstrates that the Iranian government is willing to cooperate with ICE's repatriation efforts, which means that Petitioner's removal is practicable and thus that Petitioner has not given "good reason to believe" that he cannot be removed in the reasonably foreseeable future. Petitioner claims, and Respondents do not contest, that ICE tried and failed previously to obtain travel documents from Iran to effectuate Petitioner's removal. *See* Petition at ¶ 13. But the existence of this prior effort strengthens Respondent's claim. Petitioner claims that Iran will not issue travel documents for him "without the originals of Mr. Eshaghian's Iranian birth certificate and passport, which he does not have." Petition at ¶ 13. But Petitioner cannot explain why, if ICE's prior attempt failed because they lacked these documents, Iran chose to grant him a consular interview. If his lack of documents was an absolute bar to his repatriation, as Petitioner claims, then Iran would have had no reason to interview him. Moreover, Petitioner has provided no separate reason to believe that his lack of documents constitutes an impediment to his removal, and a petitioner must provide more than "speculation and conjecture" to prevail on a *Zadvydas* claim. *Simon*, 2019 U.S. Dist. LEXIS 148526 at *10 (quoting *Idowu v. Ridge*, 2003 U.S. Dist. LEXIS 13503 at *11 (N.D. Tex. 2003)). The Court should therefore deny the Petition.

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF

A. Legal Standard

Petitioner asks this Court to issue a preliminary injunction granting him immediate release from custody. This motion should be denied because Petitioner has not demonstrated entitlement to the relief he requests.

To obtain a preliminary injunction, 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." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Injunctive

relief is "an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 9.

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 claim should not be granted. 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 not issue a preliminary injunction.

C. Petitioner cannot establish irreparable harm.

The Court should deny Petitioner's motion for a preliminary injunction 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 a preliminary injunction 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."). "[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 in order to effectuate his removal to Iran.

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 v. Holder*, 556 U.S. 418, 435 (2009). "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."). Given Petitioner's undisputed, extensive, and violent criminal history and the likelihood of his removal in the reasonably foreseeable future, the public and governmental interest in permitting his continued detention to effectuate removal is significant. Because Petitioner is a convicted criminal subject to a final removal order, the public interest lies with the government's ability to effectuate his removal to Iran.

V. CONCLUSION

The Court should deny the Motion for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Preliminary Injunction (Doc. 3).

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RESPECTFULLY SUBMITTED December 5, 2025.

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s/Brooks Chupp
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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/M. Beickert
United States Attorney's Office