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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Nader Eshaghian,

10 Petitioner,

11 vs.

12 Chris Howard, Acting Warden, et al.,

13 Respondents.
14

No. 2:25-cv-4141-PHX-DWL (ASB)

**Reply in Support of Petition for a Writ of
Habeas Corpus and Motion for a
Preliminary Injunction**

15 Respondents are no closer to obtaining travel documents that would allow Mr. Eshaghian
16 to return to Iran today than they were when Mr. Eshaghian filed this petition. Nor are they any
17 closer to obtaining those documents today than they were when he was arrested on July 7, 2025;
18 when he was ordered removed in 2003; or indeed when he was previously ordered deported in
19 1995. The Iranian Interests Section of the Pakistani Embassy informed Mr. Eshaghian on October
20 31, 2025, that travel documents would not be forthcoming because he does not have his original
21 Iranian birth certificate and passport. The Court should grant the petition after combining a
22 ruling on the motion for a preliminary injunction with a trial on the merits as authorized by Fed.
23 R. Civ. P. 65(a).

24 **Background**

25 The relevant facts are effectively uncontested here. Mr. Eshaghian was born in Iran in
26 1959, and came to the United States in 1974 on a student visa. He became a lawful permanent
27 resident in 1978. He was ordered deported in 1995 based on a conviction for possession of cocaine

1 for sale and possession of cocaine, in violation of Cal. Health & Safety Code § 11351. *See*
2 *Eshaghian v. INS*, No. 97-70426, 2000 WL 96637 (9th Cir. Jan. 27, 2000). Over the course of the
3 last 30 years, Mr. Eshaghian has been released from immigration custody numerous times on
4 orders of supervision, each time presumably for the same reason—the Iranian Interests Section
5 of the Pakistani Embassy will not issue travel documents for him because he does not have his
6 original Iranian birth certificate or passport. (Dkt. #22 at 5 (explaining that respondents do not
7 contest Mr. Eshaghian’s assertion that attempts to obtain travel documents prior to 2025 were
8 unsuccessful for this reason))

9 However, the government possesses scant documentation to support this narrative, as the
10 discovery process has revealed. When Mr. Eshaghian filed his petition, he also filed a motion for
11 limited discovery, in which he asked the Court to order respondents to produce five categories of
12 documents:

- 13 1. Mr. Eshaghian’s entire A-file;
- 14 2. A transcript (or, failing that, a recording) of any and all hearings in Mr.
15 Eshaghian’s case before the immigration courts that led to his being ordered
16 removed from the United States;
- 17 3. Any and all requests from ICE to any diplomatic representative of the Islamic
18 Republic of Iran, including the Office for the Protection of the Interests of the
19 Islamic Republic of Iran housed by the Pakistani Embassy, pertaining to travel
20 documents that would “facilitate” Mr. Eshaghian’s removal to Iran, and any
21 responsive or related correspondence to or from those diplomatic
22 representati[v]es pertaining to these requests for travel documents;
- 23 4. Any and all documents relating to the periodic custody reviews described in 8
24 C.F.R. § 241.4 for all periods of time that Mr. Eshaghian has been in ICE custody;
25 and
- 26 5. Any and all documents relating to any determination under 8 C.F.R. § 241.13 and
27 8 C.F.R. § 241.14 regarding whether there is a significant likelihood of removing
28 Mr. Eshaghian in the reasonably foreseeable future.

(Dkt. #4 at 2–3)

26 The Court granted this request in full when it ordered respondents to answer the petition.
27 (Dkt. #7 at 2) But when respondents pointed out that the Court had acted on the request without

1 giving them an opportunity to be heard (Dkt. #9), the Court directed the parties to meet and
2 confer about the scope of the discovery request. (Dkt. #14 at 7) The parties did so, and agreed to
3 narrow the discovery request as follows:

- 4 1. Mr. Eshaghian agreed to narrow his request regarding his A-file to “any and all
5 documents, not otherwise specifically requested, in [his] A-file that pertain to
6 Respondents’ ability to remove [him] in the reasonably foreseeable future,
7 specifically including documents that relate to prior or current removal efforts.”
- 8 2. Mr. Eshaghian agreed not to request transcripts or recordings of his proceedings
9 before the immigration courts.
- 10 3. Respondents’ counsel agreed to ascertain whether respondents possessed records
11 of any communications between ICE and “any diplomatic representative of the
12 Islamic Republic of Iran, including the Office for the Protection of the Interests of
13 the Islamic Republic of Iran housed by the Pakistani Embassy, pertaining to travel
14 documents that would ‘facilitate’ Mr. Eshaghian’s removal to Iran, and any
15 responsive or related correspondence to or from those diplomatic
16 representati[v]es pertaining to these requests for travel documents.” Counsel
17 further agreed to review any documents covered for privilege and confer again
18 with Mr. Eshaghian’s counsel if respondents intended to assert any kind of
19 privilege.
- 20 4. Respondents agreed to produce all finalized periodic custody reviews under 8
21 C.F.R. § 241.4.
- 22 5. Respondents agreed to produce all finalized assessments of likelihood of removal
23 under 8 C.F.R. §§ 241.13 and 241.14.

24 (Dkt. #17 at 2–3)

25 The Court then denied Mr. Eshaghian’s motion for discovery as moot. (Dkt. #18)

26 On December 5, 2025, respondents produced 34 pages of the agreed-upon documents. All
27 of these documents pertained to various decisions to continue Mr. Eshaghian in detention or to
28 release him on an order of supervision. (Dkt. #23 at 4) Mr. Eshaghian pointed out that
respondents had not affirmatively explained that these 34 pages were all of the documents in
respondents’ possession that fell within the four agreed-upon narrowed categories of documents.
(Dkt. #4 at 4) And because the Court had previously denied Mr. Eshaghian’s motion for
discovery, respondents were under no obligation to produce any more such documents if they
had any. (Dkt. #4 at 5) Mr. Eshaghian accordingly renewed his discovery request.

1 In response to the renewed discovery request, respondents provided a separate
2 explanation of the documents they had produced or withheld under the agreed-upon narrowed
3 discovery request.¹ Respondents explained:

- 4 1. They located one document in Mr. Eshaghian's A-file that pertained to prior or
5 current efforts to remove Mr. Eshaghian to Iran. They described this document as
6 "a formal request to the Government of Iran by the Government of the United
7 States with respect to the issuance of a travel document for [Mr. Eshaghian's]
8 removal in 2000." They asserted that the document was "privileged," without
9 identifying the nature of the privilege or the basis for the assertion, and
10 unilaterally withheld it.
- 11 2. They located one other document pertaining to communications between ICE and
12 the Iranian Interests Section of the Pakistani Embassy regarding Mr. Eshaghian's
13 travel documents. They described this document as "an email from the
14 Government of the United States to the Government of Iran regarding [Mr.
15 Eshaghian's] removal." They asserted that the document as subject to the state-
16 secrets, diplomatic-communications, law-enforcement-sensitive, and deliberative-
17 process privileges, without identifying the basis for this assertion, and unilaterally
18 withheld it.
- 19 3. They explained that the 34 pages contained any and all documents relating to
20 periodic custody reviews under 8 C.F.R. § 241.4.
- 21 4. They explained that the 34 pages contained any and all documents relating to
22 assessments under 8 C.F.R. §§ 241.13 and 241.14 regarding the likelihood of
23 removing Mr. Eshaghian in the reasonably foreseeable future.

24 Thus it appears that respondents have no evidence that they have ever received a
25 response from the Iranian Interests Section explaining why Mr. Eshaghian's travel documents
26 were not issued. Accordingly, they did not contest, and thus admitted, that Mr. Eshaghian's
27 travel documents did not issue because he does not have his original Iranian birth certificate and
28 passport. *See* Fed. R. Civ. P. 8(b)(6).

29 In particular, respondents do not appear to have any evidence to support the following
30 statements from deportation officer Sergio Cabrera:

- 31 32. On or around July 7, 2025, ERO apprehended Mr. Eshaghian.
- 32 33. On July 22, 2025, ERO ordered documents related to his removal order.

33 ¹This document is attached as an exhibit to this filing.

1 34. On August 4, 2025, the A file was sent to ERO unit to request a travel document.

2 35. On August 20, 2025, the travel document request was sent.

3 37. On or around October 30, 2025, the Embassy of Iran contacted the travel
4 document officer to conduct a telephonic interview as soon as possible.

5 38. On October 31, 2025, the Interests Section of the Islamic Republic of Iran
6 conducted a telephonic interview with Mr. Eshaghian.

(Dkt. #22-1 at 5)

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8 (Documentation supporting the assertion in paragraph 36 in Mr. Cabrera's declaration is
9 included in the 34 pages of discovery. The assertion in paragraph 35 may or may not be addressed
10 by respondents' claim of privilege with respect to the email described in the response to the
11 requests for production; respondents did not provide the date of the email.)

12 According to Mr. Eshaghian, during the October 31 interview with the Iranian Interests
13 Section, he was again told that travel documents would not issue because he does not have his
14 original Iranian birth certificate or passport. Mr. Eshaghian will provide a declaration that says
15 this as soon as practicable on account of the holiday season.

16 **Argument**

17 This is a simple case, and Mr. Eshaghian should prevail. The government has known for
18 30 years that it cannot obtain necessary travel documents that will facilitate Mr. Eshaghian's
19 return to Iran, because Mr. Eshaghian does not have documents that will satisfy the Iranian
20 Interests Section of the Pakistani Embassy that he is an Iranian citizen. Even now, the
21 government has no evidence that they have documents to provide to the Iranian Interests Section
22 that would satisfy them. There is simply no likelihood that Mr. Eshaghian will be removed to Iran
23 in the reasonably foreseeable future—something the government has known for three decades.
24 The Court should grant Mr. Eshaghian's motion for a preliminary injunction and, as authorized
25 by Fed. R. Civ. P. 65(a), his petition as well.
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1 **1. The government has failed to rebut the presumption that there is no significant**
2 **likelihood of Mr. Eshaghian’s removal in the reasonably foreseeable future.**

3 By statute, the government must ordinarily remove an alien who has been ordered
4 removed during the “removal period.” 8 U.S.C. § 1231(a)(1)(A). This period began for Mr.
5 Eshaghian on January 27, 2000, when the Ninth Circuit denied his petition for review of the 1995
6 removal order. (Dkt. #1 at 5 ¶ 19.a.ii) See 8 U.S.C. § 1231(a)(1)(B)(ii). Once an alien has been in
7 detention for six months after the removal period began, and the alien “provides good reason to
8 believe that there is no significant likelihood of removal in the reasonably foreseeable future, the
9 Government must respond with evidence sufficient to rebut that showing.” *Zadvydas v. Davis*,
10 533 U.S. 678, 701 (2001). If removal is not reasonably foreseeable, continued detention under
11 § 1231 is illegal. *Id.* at 699–700.

12 Mr. Eshaghian has been detained by immigration officials for well over six months after
13 the removal period began. This is certainly true if all periods of time that he has ever been
14 detained by immigration officials are aggregated. Even if the Court counts only the period of time
15 since July 7, 2025, when Mr. Cabrera says Mr. Eshaghian was most recently arrested, the six-
16 month period will expire next week. In any event, respondents have admitted that for most of the
17 last 30 years, Mr. Eshaghian could not be removed from the United States because the Iranian
18 Interests Section would not issue travel documents to him.

19 Even so, the government now says that Mr. Eshaghian has not shown “‘good reason to
20 believe’ that he cannot be removed in the reasonably foreseeable future.” (Dkt. #22 at 5) The
21 government’s argument here is difficult to follow. According to the government, despite 30 years
22 of what appears to have been consistent refusal to issue travel documents, the Iranian Interests
23 Section now appears to be “willing to cooperate with ICE’s repatriation efforts.” (Dkt. #22 at 5)
24 So far, any such cooperation has been limited to one telephone call between Mr. Eshaghian and
25 an official at the Iranian Interests Section. The government conspicuously does *not* say that this
26 conversation resulted in the issuance of travel documents. Quite the contrary—the government
27 implies what Mr. Eshaghian will say in his forthcoming declaration, that he was told that travel
28 documents would not issue. Mr. Cabrera expressly says that ICE will remove Mr. Eshaghian to

1 Iran *once travel documents are issued*. (Dkt. #22-1 at 5 ¶ 40) Yet he remains in respondents'
2 custody, presumably because in the two months since Mr. Eshaghian spoke to an official at the
3 Iranian Interests Section, travel documents have (predictably) not been issued.

4 So the government suggests that it does not know the reason why Mr. Eshaghian has not
5 been removed in the 30 years since he was first ordered removed. It faults Mr. Eshaghian for
6 failing to explain “why, if ICE’s prior attempt failed because they lacked these documents, Iran
7 chose to grant him a consular interview” (Dkt. #22 at 5)—as if there may be some reason *other*
8 *than* the lack of travel documents that prevents Mr. Eshaghian’s removal. The premise of this
9 assertion is inconsistent with respondents’ admission that they have previously tried and failed to
10 obtain travel documents in order to accomplish Mr. Eshaghian’s removal. And this assertion
11 ultimately does not undermine Mr. Eshaghian’s assertion that he cannot be removed because he
12 cannot provide the documentation necessary to satisfy the Iranian Interests Section’s
13 requirements for issuing travel documents. The most natural explanation is that travel
14 documents have not issued in 2025 for the same reason they did not issue in 2015 or 2005 or
15 1995. Consistent with the presumption that his removal is not now reasonably foreseeable, Mr.
16 Eshaghian need not speculate why he was granted a consular interview in order to provide “good
17 reason to believe” that his removal is not reasonably foreseeable.

18 The government also faults Mr. Eshaghian for failing to provide any “separate reason to
19 believe that his lack of documents constitutes an impediment to his removal.” (Dkt. #22 at 5)
20 This assertion flies in the face of 30 years of history, for if the lack of documents were *not* an
21 impediment to Mr. Eshaghian’s removal, surely he would have been returned to Iran by now.

22 The bottom line is simple. Both respondents and Mr. Eshaghian have known for 30 years
23 that travel documents will not issue because he does not have his original Iranian birth certificate
24 and passport. His *Zadvydas* claim hardly rests on “speculation and conjecture,” as respondents
25 posit. (Dkt. #22 at 5) Rather, respondents’ feeble attempt to explain why there *is* a significant
26 likelihood of removal in the reasonably foreseeable future, despite another apparent failure to
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1 obtain travel documents, shows that his continued detention is illegal. The Court should grant
2 the petition.

3 **2. The government has not shown how the factors that bear on the discretion to issue a**
4 **preliminary injunction favor it.**

5 The parties agree on the governing standard for issuing a preliminary injunction (and a
6 temporary restraining order). “A plaintiff seeking a preliminary injunction must establish that he
7 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
9 public interest.” *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843–44 (9th Cir.
10 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

11 “Alternatively, a preliminary injunction may issue where serious questions going to the merits
12 were raised and the balance of hardships tips sharply in plaintiff’s favor if the plaintiff also shows
13 that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Id.*
14 at 844 (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1135).

15 The government cannot overcome Mr. Eshaghian’s strong showing that all four of these
16 factors favor him. He has already explained why there is no likelihood that he will be removed
17 from the United States in the reasonably foreseeable future, such that he is likely to prevail on his
18 *Zadvydas* claim. Along these lines, the government also contends that Mr. Eshaghian “cannot
19 establish irreparable harm if he is not released from detention where he is lawfully and
20 constitutionally detained pursuant to a final executable removal order.” (Dkt. #22 at 6) But his
21 detention is *not* lawful, as he has already explained, and so each day that this unlawful detention
22 continues constitutes irreparable harm.

23 Furthermore, the government’s assertion that the public interest and balance of the
24 equities favor it, not Mr. Eshaghian, ignores a different aspect of *Zadvydas*. The government
25 agrees that these factors merge when a person applies for an injunction against the government.
26 (Dkt. #22 at 6) Then it adds that ordering Mr. Eshaghian released would “negatively impact the
27 public interest by jeopardizing the orderly and efficient administration of this country’s
28 immigration laws.” (Dkt. #22 at 7) But in *Zadvydas* the Court observed that the “plenary power”

1 that Congress has “to create immigration law” “is subject to important constitutional
2 limitations.” 533 U.S. at 695 (citing *INS v. Chadha*, 462 U.S. 919, 942–43 (1983)). The statute
3 that authorizes Mr. Eshaghian’s detention here, 8 U.S.C. § 1231, contains “no clear indication of
4 congressional intent to grant the Attorney General the power to hold indefinitely in confinement
5 an alien ordered removed.” *Id.* at 697. The public has no interest in continuing to imprison a
6 person like Mr. Eshaghian, whom the government cannot remove from the United States
7 because it does not have the proper documentation. The Supreme Court has already said that
8 such imprisonment is unauthorized by statute. The public has no interest in seeing its
9 government act unlawfully.

10 The government finally suggests that the public interest favors it because Mr. Eshaghian
11 is “a convicted criminal subject to a final removal order.” (Dkt. #22 at 7) Mr. Eshaghian has
12 never denied this fact. But under Ninth Circuit law, the government cannot rely on Mr.
13 Eshaghian’s criminal record to argue against his *Zadvydas* claim. That court has specifically
14 rejected the notion that “*Zadvydas* contains an exception to the presumptive six-month rule for
15 particularly dangerous individuals where there are circumstances, such as mental illness, that
16 help to create the danger.” *Thai v. Ashcroft*, 366 F.3d 790, 794 (9th Cir. 2004). The
17 “Government’s ability to detain individuals is generally subject to the limitations imposed by the
18 Due Process Clause. The statement in *Zadvydas* that noncriminal detention by the Government
19 is permissible only in narrow nonpunitive circumstances was intended to illustrate what the
20 Government is generally *prohibited* from doing, and what it may in some circumstances be
21 permitted to do. It did not state what the Government is authorized to do under § 1231(a)(6).”
22 *Thai*, 366 F.3d at 795. The Court in *Zadvydas* explained that, in the civil (that is, nonpunitive)
23 context, “preventive detention based on dangerousness only when limited to specially dangerous
24 individuals and subject to strong procedural protections.” 533 U.S. at 691 (distinguishing *Kansas*
25 *v. Hendricks*, 521 U.S. 346, 368 (1997), and *United States v. Salerno*, 481 U.S. 739, 747, 750–52
26 (1987)). But the Court also concluded that there is “no sufficiently strong special justification
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1 here for indefinite civil detention” based on danger— “at least as administered under”
2 § 1231(a)(6). *Id.* at 690.

3 In particular, the Ninth Circuit has said that an alien as to whom there is no significant
4 likelihood of removal in the reasonably foreseeable future may not “be detained because he poses
5 a threat to the community due to his propensity for violence.” *Thai*, 366 F.3d at 797. The
6 government does not assert that Mr. Eshaghian poses a threat to national security, or suffers
7 from any mental illnesses that might render him especially dangerous, or has a particularly
8 violent criminal history. And a criminal record—even one that includes serious violent activity,
9 such as homicide—does not *ipso facto* transform any alien into a national-security threat that
10 might justify detention even when there is no significant likelihood of removal in the reasonably
11 foreseeable future. *See id.* (quoting *Zadvydas*, 533 U.S. at 699). Rather, the Ninth Circuit has read
12 *Zadvydas* to “permit consideration of nothing more than the reasonable foreseeability of
13 removal.” *Id.* (quoting *Zadvydas*, 533 U.S. at 714 (Kennedy, J., dissenting)). In sum, Mr.
14 Eshaghian’s criminal record is no obstacle to granting his *Zadvydas* claim, because there is no
15 significant likelihood of his being removed to Iran in the reasonably foreseeable future.

16 Conclusion

17 The petition should be granted, and this Court should order Mr. Eshaghian released from
18 respondents’ custody forthwith.

19 Respectfully submitted:

December 29, 2025.

20
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