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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Carlos Ruben Basilio Mosso, Petitioner, v. John Cantu, *et al.* Respondents.	No. CV-25-04257-PHX-MTL (DMF) **RESPONSE TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Respondents, by and through counsel, respond to the Court's Order to Show Cause (Doc. 9), and accordingly to the Petition for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining Order (Doc. 2). Petitioner Carlos Ruben Basilio Mosso is a national of Mexico and a criminal alien convicted of murder. An immigration judge ordered that he be removed to Mexico after his conviction, and the judge granted him deferral of removal to Mexico pursuant to the Convention Against Torture ("CAT"). He was most recently detained by U.S. Immigration and Customs Enforcement ("ICE") on July 1, 2025, and ICE is presently seeking to remove him to Spain, Colombia, or Guatemala. In this habeas petition, Petitioner seeks a Court order directing ICE to release

him immediately 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 without inspection on February 27, 1980, and then again at an unknown time thereafter. Declaration of Kenneth Livingston, Deportation Officer, Enforcement and Removal Operations, attached as Exhibit A, at ¶¶ 3–4. Petitioner was subsequently convicted twice of possession of a controlled substance: once in 2007 and once in 2008. *Id.* at ¶¶ 8–9. Petitioner was convicted of murder and assault in 2011. *Id.* at ¶ 12. ICE began removal proceedings against Petitioner on October 27, 2017, under Immigration and Nationality Act ("INA") sections 212(a)(2)(A)(i) and 212(a)(6)(A)(i) [1] for entering the United States without admission, for committing a crime involving moral turpitude, and for committing a state-law offense involving controlled substances. *Id.* at ¶ 38. An immigration judge ordered him removed to Mexico but granted deferral of removal to Mexico under the Convention Against Torture. *Id.* at ¶ 46. On September 11, 2018, Petitioner was granted release on an order of supervision. *Id.* at ¶ 47. Petitioner was out of immigration custody until ICE detained him on July 1, 2025. *Id.* at ¶ 48. On August 16, 2025, ICE requested travel documents for Petitioner from Spain, Columbia, and Guatemala. *Id.* at ¶ 50.

III. THE HABEAS PETITION SHOULD BE DENIED

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

Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not "reasonably foreseeable." Petitioner argues that he may not be detained longer than 90 days because the statute that authorizes longer detentions does not apply to him. However, Petitioner misrepresents both his own situation

[1] INA § 212 is codified at 8 U.S.C. § 1227.

and the holding of *Zadvydas*. Petitioner qualifies for detention beyond 90 days because he was removed due to a conviction for a crime involving moral turpitude, which qualifies him for detention beyond 90 days. Petitioner may only challenge his confinement pursuant to *Zadvydas* once he has been detained by ICE for six months, and Petitioner has not been detained for six months. Finally, Petitioner cannot establish, as *Zadvydas* requires to be entitled to release, that his removal is not likely to occur in the reasonably foreseeable future.

An alien who is ordered removed must be detained for 90 days once their removal order becomes administratively final.[2] 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 8 U.S.C. § 1227(a)(2) may be detained for a longer period. 8 U.S.C. § 1231(a)(6). The INA does not authorize indefinite detention. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). 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 this 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).

Petitioner was ordered removed under 8 U.S.C. § 1227(a)(2). *See* Exhibit A at ¶ 38, *see also supra* fn. 1. As discussed above, an alien ordered removed under this section may be detained beyond the initial 90-day period. 8 U.S.C. § 1231(a)(6). Thus, Petitioner's argument that he may only be detained for 90 days is meritless.

The earliest date that Petitioner's removal order could have become administratively

[2] A removal order may become administratively final in a number of different circumstances, including upon an alien's waiver of appeal rights or the expiration of their time to appeal. 8 C.F.R. § 1241.1.

final is August 15, 2018. Exhibit A at ¶ 46.[3] Petitioner was released from ICE's custody on September 11, 2018, and was then free until July 1, 2025. *Id.* at ¶¶ 47–48.[4] Petitioner cannot state a viable claim for unconstitutionally indefinite detention under *Zadvydas* until he has been detained for six months pursuant to a final order of removal. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002); *Chance v. Napolitano*, 453 Fed. App'x 535, 536 (5th Cir. 2011); *Luong v. Gonzales*, No. 2:07-cv-00146-SMM (LOA) (Doc. 19), *R&R adopted at* 2007 U.S. Dist. LEXIS 83177; *see also Singh v. Donelan*, 2015 U.S. Dist. LEXIS 59734 (D. Mass March 4, 2015) at *6–7 (collecting cases). "It is not enough that the period of time expired by the time the petition is ruled on by the court, the *Zadvydas* period must have expired before the petition is filed." *Ba v. Gonzales*, 2008 U.S. Dist. LEXIS 113385 (N.D. Fla. March 6, 2008) at *4–5, *R&R adopted* 2008 U.S. Dist. LEXIS 43766 (N.D. Fla. May 19, 2008). Thus, *Zadvydas* bars Petitioner from claiming that his detention is unconstitutionally indefinite until January 5, 2026, at the earliest, and his petition must be dismissed as premature on that basis.

Further, even if Petitioner's claim were ripe—which it is not—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.

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[3] It is unclear whether Petitioner waived his right to appeal and if so, when he did so, but the removal order cannot have become final earlier than the date on which it was issued.

[4] Courts disagree about whether the six-month *Zadvydas* period is cumulative, or whether it resets when an alien is released. *See Abuelhwa v. Noem*, 2025 U.S. Dist. LEXIS 203959 at *11 (collecting cases). However, even if the six-month period is cumulative, Petitioner has still not been detained for six months.

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). 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).

Petitioner's removal is practically attainable, and his detention is not "potentially permanent." *Demore*, 538 U.S. at 528. Petitioner must show that there is some practical impediment to his removal, and the only one that Petitioner claims to exist is that "[t]he Mexican consulate is unable to provide a birth certificate for Petitioner." Doc. 1 at ¶ 35. Petitioner has not explained why this would prove an impediment to his removal to a third country, and the existence of pending removal requests suggests that it is not. Exhibit A at ¶ 50. Petitioner likewise makes the bare assertion that "ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries," Doc. 1 at ¶ 38, but he provides no evidence to support it. In short, Petitioner has provided no evidence whatsoever that his removal cannot be reasonably effectuated in the reasonably foreseeable future. Petitioner's claim is barred under *Zadvydas* because he has brought it prematurely. Even if the Court disagrees, Petitioner has not provided "good reason" to question that his removal is likely to occur in the reasonably foreseeable future, and Respondents have shown that there is, due to several pending requests for travel documents. Thus, Petitioner has failed to show that his detention is unconstitutionally indefinite under *Zadvydas*, so his habeas petition should be denied. *See Zadvydas*, 533 U.S. at 700–01.

IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF

A. Legal Standard

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

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. . . .").

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 two main reasons: 1) his detention still falls within the six-month presumptively reasonable period established by *Zadvydas* and 2) he cannot meet his burden to establish that there is no significant likelihood of removal in the reasonably foreseeable future. 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 where ICE seeks viable third countries to accept Petitioner.

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."). Given Petitioner's undisputed and violent criminal history and the fact that he cannot establish that his removal is not likely 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 murderer subject to a final removal order, the public interest lies with the government's ability to effectuate his removal from the United States.

For the foregoing reasons, Respondents respectfully request that this Court deny the Motion for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining Order (Doc. 2).

RESPECTFULLY SUBMITTED November 26, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 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