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10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 ALI PARTOVI,

13 Petitioner,

14 v.

15 PAMELA BONDI, Attorney General of the
 United States; KRISTI NOEM, Secretary,
 16 United States Department of Homeland
 Security; MICHAEL BERNACKE, Field
 17 Director, West Valley City Office; TODD
 LYONS, Acting Director; JOHN MATTOS,
 18 Nevada Southern Detention Center,

19 Respondents.

Case No. 2:25-cv-02283-JAD-DJA

**Federal Respondents' Response to
 Petitioner's Motion for Temporary
 Restraining Order (ECF No. 11)**

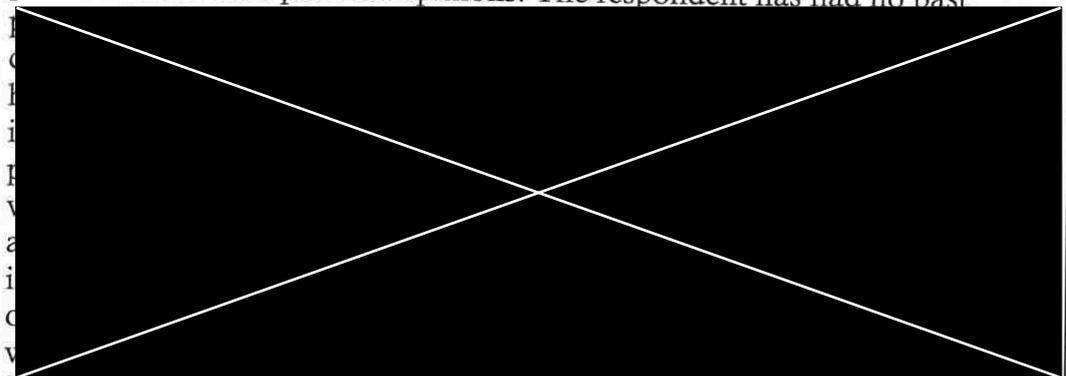
20 Federal Respondents hereby file their Response to Petitioner Ali Partovi's Motion
 21 for Temporary Restraining Order. (ECF No. 11).

22 **I. Factual Background**

23 Petitioner, Ali Partovi ("Petitioner") is a citizen of Iran with an administratively
 24 final order of removal that was entered by the Immigration Judge ("IJ") on May 3, 2002.
 25 See May 3, 2002, Final Order of Removal attached hereto as Exhibit A. Petitioner was in
 26 asylum-only proceedings, not removal proceedings under 8 U.S.C. 1229a because he
 27 entered on a visa waiver program using a fraudulent Italian Passport under the name of
 28 Michel Franchini. See Exhibit A, page 1. Petitioner was prosecuted and plead guilty and

1 was sentenced for the offense of false use of passport in violation of Title 18 of U.S.C 1543.
2 See Exhibit A, page 2. The IJ denied the application for asylum, for withholding of
3 removal pursuant to Section 241(b)(3) of INA and for relief under the United Nations
4 Convention Against Torture (“CAT”). See Exhibit A, p 28. The IJ also ordered that
5 Petitioner be removed from the United States to Iran. The IJ explained the basis for her
6 ruling and stated:

7 The respondent has further failed to establish that relief is warranted under
8 the United Nations Convention Against Torture. Country conditions are
9 clear in establishing that there are people in Iran who have been tortured and
10 persecuted for their political opinions. The respondent has had no past



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15 live in Iran without any problems. The application for protection under the
16 United Nations Convention Against Torture will be denied. See Exhibit A,
page 27.

17 Petitioner filed an untimely appeal on August 29, 2008 which was dismissed by the Board
18 of Immigration Review (“BIA”) on November 12, 2008. Petitioner was in custody until
19 October 12, 2011. Enforcement and Removal Operations (ERO) within Immigration and
20 Customs Enforcement (“ICE”) placed him on an order of supervision while submitting
21 requests to the Iranian embassy for a travel document. Petitioner remained in that status
22 until June 23, 2025 when he was detained by ICE in a target enforcement action.

23 24 **II. Legal Argument**

25 **A. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

26 Petitioner’s motion should be denied because he has not established that he is
27 entitled to interim injunctive relief. The legal standard for issuing a TRO is essentially
28 identical to the standard for issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co. v.*

1 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *see also Zamfir v. Casperlabs, LLC*,
2 528 F. Supp. 3d 1136, 1142 (S.D. Cal. 2021). “A party seeking a preliminary injunction
3 must meet one of two variants of the same standard.” *All. for the Wild Rockies v. Pena*, 865
4 F.3d 1211, 1217 (9th Cir. 2017). Under the *Winter* standard, a party is entitled to a
5 preliminary injunction if he demonstrates (1) that he is likely to succeed on the merits, (2)
6 that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the
7 balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter*
8 *v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). A party
9 must make a showing on all four prongs. *A Woman’s Friend Pregnancy Res. Clinic v. Becerra*,
10 901 F.3d 1166, 1167 (9th Cir. 2018) (cleaned up). Plaintiffs must demonstrate a “substantial
11 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).
12 When “a plaintiff has failed to show the likelihood of success on the merits, we need not
13 consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th
14 Cir. 2015).

15 The final two factors required for preliminary injunctive relief — balancing of the
16 harm to the opposing party and the public interest — merge when the Government is the
17 opposing party. *See Nken*, 556 U.S. at 435. The Supreme Court has specifically
18 acknowledged that “[f]ew interests can be more compelling than a nation’s need to ensure
19 its own security.” *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v.*
20 *Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. of California v. Orrin W.*
21 *Fox Co.*, 434 U.S. 1345, 1351 (1977); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211,
22 1220–21 (D.C. Cir. 1981); *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th Cir. 2002) (movant
23 seeking injunctive relief “must show either (1) a probability of success on the merits and the
24 possibility of irreparable harm, or (2) that serious legal questions are raised and the balance
25 of hardships tips sharply in the moving party’s favor.”) (quoting *Andriiu v. Ashcroft*, 253 F.3d
26 477, 483 (9th Cir. 2001)).

27 In this case, Petitioner cannot establish that he is likely to succeed on the underlying
28 merits, there is no showing of irreparable harm, and the equities do not weigh in his favor.

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2 **B. Petitioner is not likely to succeed on the underlying merits**

3 A preliminary injunction is an “extraordinary remedy never awarded as of right.”
4 *Winter*, 555 U.S. at 7, 24. The first *Winter* factor — likely success on the merits — is “the
5 most important” and is a threshold inquiry. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.
6 2015). Petitioners carry the burden of demonstrating a likelihood of success (or alternatively
7 showing “serious questions going to the merits”). See *A Woman's Friend Pregnancy Resource*
8 *Clinic*, 901 F.3d at 1167; *Alliance for the Wild Rockies*, 865 F.3d at 1217.

9 In this case, Petitioner cannot establish that he is likely to succeed on the underlying merits
10 of his claims because his detention is

11 **C. Petitioner Cannot Show Irreparable Harm**

12 To prevail on their request for interim injunctive relief, Petitioners must demonstrate
13 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th
14 Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197,
15 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. See
16 *Winter*, 555 U.S. at 22. And as discussed above, detention alone is not an irreparable injury.
17 See *Reyes*, 2021 WL 662659, at *3 (“[C]ivil detention after the denial of a bond hearing [does
18 not] constitute[] irreparable harm such that prudential exhaustion should be waived.”).
19 Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm
20 is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an
21 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
22 entitled to such relief.” *Winter*, 555 U.S. at 22. Here, as explained above, because
23 Petitioner’s alleged harm “is essentially inherent in detention, the Court cannot weigh this
24 strongly in favor of” Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL
25 7474861, at *10 (N.D. Cal. Dec. 24, 2018).

26 **D. Balance of Equities Do Not Tip in Petitioner’s Favor**

27 It is well settled that the public interest in enforcement of the United States’
28 immigration laws is significant. See, e.g., *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58

1 (1976); *Blackie's House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has recognized
2 that the public interest in enforcement of the immigration laws is significant.”) (citing cases);
3 *see also Nken*, 556 U.S. at 435 (“There is always a public interest in prompt execution of
4 removal orders: The continued presence of an alien lawfully deemed removable undermines
5 the streamlined removal proceedings IIRIRA established and permits and prolongs a
6 continuing violation of United States law.”) (internal quotation omitted). The BIA also has
7 an “institutional interest” to protect its “administrative agency authority.” *See McCarthy v.*
8 *Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*,
9 534 U.S. 516 (2002). “Exhaustion is generally required as a matter of preventing premature
10 interference with agency processes, so that the agency may function efficiently and so that it
11 may have an opportunity to correct its own errors, to afford the parties and the courts the
12 benefit of its experience and expertise, and to compile a record which is adequate for
13 judicial review.” *Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc.*, 30 F.4th 905, 913
14 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, “agencies, not
15 the courts, ought to have primary responsibility for the programs that Congress has charged
16 them to administer.” *McCarthy*, 503 U.S. at 145. Moreover, “[u]ltimately the balance of the
17 relative equities ‘may depend to a large extent upon the determination of the [movant’s]
18 prospects of success.’” *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012
19 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770,
20 778 (1987)).

21 In this case, as explained above, Petitioner cannot succeed on the merits of his claims
22 because his detention is lawful under 8 U.S.C. 1231 and *Zadvydas*. The balancing of equities
23 and the public interest weigh heavily against granting Petitioner equitable relief.

24 **E. Petitioner is Not Likely to Succeed on the merits of his claim that his**
25 **detention violates *Zadvydas* and 8 U.S.C. 1231(a)(6) (Grounds 1 and 2 of**
26 **Petition)**

27 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory
28 right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a

1 due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In
2 *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s
3 demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would
4 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme
5 Court proceeded to conclude that detention of a noncitizen for up to six months under 8
6

7 U.S.C. § 1231 is “presumptively reasonable” but added that “once the [noncitizen]
8 provides good reason to believe that there is no significant likelihood of removal in the
9 reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to
10 rebut that showing.” *Id.* at 700-01. In *Zadvydas*, the Supreme Court found that post-order
11 detention could be potentially indefinite as authorized under the open-ended terms of
12 § 1231(a)(6). Finding the possibility of indefinite detention troublesome, the Supreme Court
13 clarified that there is a point at which Congress’s interest in detaining a noncitizen to facilitate
14 his removal may eventually give way to the noncitizen’s liberty interest. This shift occurs
15 when detention becomes potentially indefinite. *Zadvydas*, 533 at 690 (“A statute permitting
16 indefinite detention of an [noncitizen] would raise a serious constitutional problem.”).
17

18 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale
19 of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order
20 detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal
21 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
22 have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the
23 *earliest* point at which criminal noncitizens’ detention could raise constitutional issues. *Id.*,
24 at 701. “This 6-month presumption, of course, does not mean that every [noncitizen] not
25 removed must be released after six months.” *Id.* Courts routinely deny habeas petitions that
26 are filed with less than six months of detention. *See, e.g., Kamara v. Warden*, No. 1:21-CV-4,
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28

1 2021 U.S. Dist. LEXIS 94222, at *27-28 (M.D. Pa. Apr. 12, 2021)(Habeas petition denied
2 as Petitioner’s “current post-removal detention falls well within the 6-month presumptively
3 reasonable time frame defined by the Supreme Court in *Zadvydas*.”); *Lule-Arredondo v.*
4 *Holder*, No. C14-987-RSL-JPD, 2014 U.S. Dist. LEXIS 176932 (W.D. Wash. Nov. 17, 2014)
5 (“Should petitioner's detention continue past the six-month presumptively reasonable period,
6 he may file a new habeas petition and obtain review.”); *Farah v. U.S. Att’y Gen.*, 12 F.4th
7 1312, 1332-33 (11th Cir. 2021) (“If after six months he is still in custody and has not been
8 removed from the United States, then he can challenge his detention under section 1231(a).
9 But until then, his detention is presumptively reasonable under *Zadvydas*.”), *overruled on other*
10 *grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2 (2023).
11

12
13 In this case, although Petitioner’s detention has exceeded the six-month period
14 outlined in *Zadvydas* since being detained on June 23, 2025, ICE is working on obtaining
15 travel documents to the country of Iran so that Petitioner’s removal can be accomplished. As
16 of this filing, Petitioner’s detention has exceeded the six-month period by approximately one
17 month. However, this is not an “indefinite” period of detention as ICE is actively in the
18 process to obtain the necessary travel documents from Iran to remove Petitioner and hence
19 his Motion for Temporary Restraining Order should be denied allowing ICE a reasonable
20 time to obtain the necessary travel documents in order to remove Petitioner.
21

22 **F. Petitioner is Not Likely to Succeed on the merits of his claim that he is entitled**
23 **to adequate notice and an opportunity to be heard prior to any third country**
24 **removal (Grounds 4 and 5 of Petition)**

25 Section 1231(a)(6) satisfies both the substantive and procedural components of the
26 Due Process Clause. The Supreme Court has explained that detention is “a constitutionally
27 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). Post-
28 order detention helps ensure the removal of noncitizens who have already been “ordered

1 removed” from the United States. 8 U.S.C. § 1231(a)(6). Furthermore, § 1231(a)(6), as
2 implemented by the existing regulations, does not violate the Due Process Clause “[w]hen
3 detention crosses the six-month threshold.” *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1091
4 (9th Cir. 2011).

5
6 This case has nothing to do with third-country removal because Petitioner was
7 denied the application for asylum, for withholding of removal pursuant to Section 241(b)(3)
8 of INA and for relief under CAT and ordered removed to his country of citizenship which is
9 Iran. See Exhibit A. Therefore, Petitioner’s Motion for TRO should be denied because his
10 grounds for relief do not apply to the facts of his case.

11 **III. Conclusion**

12 For the foregoing reasons, Federal Respondents respectfully request that the Court
13 deny Petitioner’s Motion for Temporary Restraining Order.

14 Respectfully submitted this 6th day of January 2026.

15
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17 Deputy Attorney General of The United States
18 SIGAL CHATTAH
19 First Assistant United States Attorney

20 /s/ Tamer B. Botros
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23 Assistant United States Attorneys
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Certificate of Service

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I, XXXXX, certify that the [Title] was served this date via U.S. Mail and electronic mail to the following:

Name
Address
City, State Zip

Dated this ___ day of January 2023.

/s/ Xxxxx Xxxxx
XXXXX XXXXX
Title

