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8  
 9 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

10 Mehmet Kucuk,

11 Petitioner,

12 v.

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

Case No. 2:25-cv-02285-APG-MDC

**Federal Respondents' Response to  
 Petitioner's Emergency Motion for  
 Temporary Restraining Order (ECF  
 No. 13)**

17  
 18 Federal Respondents hereby file their Response to Petitioner Mehmet Kucuk's  
 19 Emergency Motion for Temporary Restraining Order (ECF No. 13).

20 **I. Factual Background**

21 On August 27, 2024, Petitioner Mehmet Kucuk ("Petitioner") who is a Turkish  
 22 citizen was arrested by ICE in California for unlawfully entering the United States without  
 23 being inspected by an immigration officer at a designated Port of Entry. See I-213 of  
 24 Petitioner Mehmet Kucuk as Exhibit A. Petitioner was processed for expedited removal  
 25 under 8 U.S.C. § 1225. Petitioner admitted to illegally crossing the international boundary  
 26 without being inspected by an immigration officer at a designated port of entry. While in  
 27 Border Patrol custody, Petitioner did not manifest a fear of return, express an intention to  
 28 apply for asylum or related protection, express a fear of persecution or torture, or express a

1 fear of return to Turkey which is his country of removal. See Exhibit A. On November 14,  
2 2024, United States and Immigration Services determined that Petitioner had established  
3 past persecution, and the presumption of persecution has not been rebutted due to his  
4 Kurdish race. See Reasonable Probability Determination Checklist and Written Analysis  
5 for Noncitizens Subject to the Securing the Border Limitation on Asylum Eligibility  
6 attached as Exhibit B. On November 29, 2024, a hearing was scheduled before the  
7 Immigration Judge (“IJ”) and Petitioner was provided with a Notice to Appear. See Notice  
8 to Appear as Exhibit C. On March 19, 2025, there was a Withholding of Removal that was  
9 granted pursuant to 8 U.S.C. § 1231(b)(3) which pertains to restriction on removal to a  
10 country where alien’s life or freedom would be threatened because of the alien’s race,  
11 religion, nationality, membership in a particular social group, or political opinion. See  
12 Order of the Immigration Judge as Exhibit D. United States Department of Homeland  
13 Security (“DHS”) reserved its right to appeal the decision and did not. Petitioner waived  
14 appeal. Petitioner is still detained because ICE has not located an alternative country for  
15 removal since April 18, 2025. On September 2, 2025, Petitioner filed a Motion to Reopen,  
16 Request for Stay of Removal, and Custody Redetermination (Bond Hearing). See Motion  
17 to Reopen attached as Exhibit E. On September 4, 2005, Petitioner’s Motion was denied  
18 because it was time barred, as it was submitted more than 90 days after the entry of an  
19 administratively final Order and due to the issues raised in the request to reopen were  
20 matters that should have been raised on appeal and are now outside the jurisdiction of the  
21 immigration judge. See Decision and Order of the Immigration Judge September 4, 2025,  
22 attached as Exhibit F. The IJ ruled that the bare allegation that Petitioner did not  
23 understand the interpreter was insufficient to move the Court to reopen his case and that  
24 allegation was not borne out by a review of the Digital Audio Recording. See Exhibit F.  
25 Furthermore, the IJ further ruled that there was no explanation by the Petitioner, who  
26 knew he was in removal proceedings and knew he had his trial, waited more than five  
27 months to attempt to reopen his case and Petitioner has not alleged any exceptional  
28 circumstances that would warrant granting a motion to reopen. See Exhibit F. Petitioner is

1 still detained because ICE has not located an alternative country for removal. On  
2 November 5, 2025, ICE issued a Decision to Continue Detention. See Decision to  
3 Continue Detention attached as Exhibit G. In the Decision, it outlined the facts of  
4 Petitioner's case and stated that Petitioner was issued a travel document by the  
5 Government of Turkey and removal is pending to a third country removal. See Exhibit G.  
6 Furthermore, the Decision specifically stated, "ICE has reason to believe there's a  
7 significant likelihood that your removal will occur in the reasonably foreseeable future,  
8 therefore, you are to remain in ICE custody at this time, as ICE is unable to conclude that  
9 the factors set forth at 8 C.F.R 241.4(e) have been satisfied. See Exhibit G. Petitioner is  
10 seeking to be released from detention. ECF No. 1-1, Page 12, line 4. Also, Petitioner is  
11 seeking an evidentiary hearing concerning the allegations in his Petition. ECF No. 1-1,  
12 Page 12, line 7. The vast majority of Petitioner's Petition includes case law and statutes in  
13 each of his "Grounds for Relief," however, there is very little application of the law to his  
14 specific case.

15 For the reasons set forth in this Response, Federal Respondents' position is that the  
16 Emergency Motion for Temporary Restraining Order should be denied, because Petitioner  
17 has been afforded due process throughout the duration of his detention. Federal  
18 Respondents are actively working on his case and based on ICE's recent determination, his  
19 removal is reasonably foreseeable and does not violate 8 U.S.C. § 1231(a)(6), and  
20 Administrative Procedures Act.

## 21 **II. Legal Argument**

### 22 **A. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief**

23 Petitioner's motion should be denied because he has not established that he is  
24 entitled to interim injunctive relief. The legal standard for issuing a TRO is essentially  
25 identical to the standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v.*  
26 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *see also Zamfir v. Casperlabs, LLC*,  
27 528 F. Supp. 3d 1136, 1142 (S.D. Cal. 2021). "A party seeking a preliminary injunction  
28 must meet one of two variants of the same standard." *All. for the Wild Rockies v. Pena*, 865

1 F.3d 1211, 1217 (9th Cir. 2017). Under the *Winter* standard, a party is entitled to a  
2 preliminary injunction if he demonstrates (1) that he is likely to succeed on the merits, (2)  
3 that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the  
4 balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter*  
5 *v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); see *Nken v. Holder*, 556 U.S. 418, 426 (2009). A party  
6 must make a showing on all four prongs. *A Woman’s Friend Pregnancy Res. Clinic v. Becerra*,  
7 901 F.3d 1166, 1167 (9th Cir. 2018) (cleaned up). Plaintiffs must demonstrate a “substantial  
8 case for relief on the merits.” *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011).  
9 When “a plaintiff has failed to show the likelihood of success on the merits, we need not  
10 consider the remaining three [*Winter* factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th  
11 Cir. 2015).

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

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

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

27 A preliminary injunction is an “extraordinary remedy never awarded as of right.”  
28 *Winter*, 555 U.S. at 7, 24. The first *Winter* factor — likely success on the merits — is “the

1 most important” and is a threshold inquiry. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.  
2 2015). Petitioners carry the burden of demonstrating a likelihood of success (or alternatively,  
3 showing “serious questions going to the merits”). See *A Woman's Friend Pregnancy Resource*  
4 *Clinic*, 901 F.3d at 1167; *Alliance for the Wild Rockies*, 865 F.3d at 1217.

5 In this case, Petitioner cannot establish that he is likely to succeed on the underlying  
6 merits of his claims because his detention is lawful, and ICE has reason to believe there’s a  
7 significant likelihood that Petitioner’s removal will occur in the reasonably foreseeable  
8 future. See Exhibit G.

### 9 **C. Petitioner Cannot Show Irreparable Harm**

10 To prevail on their request for interim injunctive relief, Petitioners must demonstrate  
11 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th  
12 Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197,  
13 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is insufficient. See  
14 *Winter*, 555 U.S. at 22. And as discussed above, detention alone is not an irreparable injury.  
15 See *Reyes*, 2021 WL 662659, at \*3 (“[C]ivil detention after the denial of a bond hearing [does  
16 not] constitute[] irreparable harm such that prudential exhaustion should be waived.”).  
17 Further, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm  
18 is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an  
19 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
20 entitled to such relief.” *Winter*, 555 U.S. at 22.

21 Here, as explained above, because Petitioner’s alleged harm “is essentially inherent  
22 in detention, the Court cannot weigh this strongly in favor of” Petitioner. *Lopez Reyes v.*  
23 *Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at \*10 (N.D. Cal. Dec. 24, 2018).

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

25 It is well settled that the public interest in enforcement of the United States’  
26 immigration laws is significant. See, e.g., *United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58  
27 (1976); *Blackie's House of Beef, Inc.*, 659 F.2d at 1221 (“The Supreme Court has recognized  
28 that the public interest in enforcement of the immigration laws is significant.”) (citing cases);

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

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

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

25 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory  
26 right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a  
27 due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In  
28

1 *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s  
2 demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would  
3 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme  
4 Court proceeded to conclude that detention of a noncitizen for up to six months under 8  
5 U.S.C. § 1231 is “presumptively reasonable” but added that “once the [noncitizen]  
6 provides good reason to believe that there is no significant likelihood of removal in the  
7 reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to  
8 rebut that showing.” *Id.* at 700-01. In *Zadvydas*, the Supreme Court found that post-order  
9 detention could be potentially indefinite as authorized under the open-ended terms of  
10 § 1231(a)(6). Finding the possibility of indefinite detention troublesome, the Supreme Court  
11 clarified that there is a point at which Congress’s interest in detaining a noncitizen to facilitate  
12 his removal may eventually give way to the noncitizen’s liberty interest. This shift occurs  
13 when detention becomes potentially indefinite. *Zadvydas*, 533 at 690 (“A statute permitting  
14 indefinite detention of an [noncitizen] would raise a serious constitutional problem.”).

15  
16  
17 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale  
18 of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order  
19 detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal  
20 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would  
21 have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the  
22 *earliest* point at which criminal noncitizens’ detention could raise constitutional issues. *Id.*,  
23 at 701. “This 6-month presumption, of course, does not mean that every [noncitizen] not  
24 removed must be released after six months.” *Id.* Courts routinely deny habeas petitions that  
25 are filed with less than six months of detention. *See, e.g., Kamara v. Warden*, No. 1:21-CV-4,  
26 2021 U.S. Dist. LEXIS 94222, at \*27-28 (M.D. Pa. Apr. 12, 2021)(Habeas petition denied  
27  
28

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

10  
11 In this case, although Petitioner’s detention has exceeded the six-month period  
12 outlined in *Zadvydas* since order of removal became final on April 18, 2025, after a recent  
13 review of his case by ICE, it was determined that Petitioner was issued a travel document by  
14 the Government of Turkey and removal is pending to a third country removal. It was also  
15 determined that ICE has reason to believe there’s a significant likelihood that Petitioner’s  
16 removal will occur in the reasonably foreseeable future, and he is to remain in ICE custody  
17 at this time. See Exhibit G. Furthermore, in the Decision it stated that the decision does not  
18 preclude Petitioner from bringing forth evidence in the future to demonstrate a good reason  
19 why his removal is unlikely. See Exhibit G.  
20  
21

22 **F. ICE’s Continued Detention of Petitioner Does Not violate the**  
23 **Administrative Procedures Act (Ground 3 of Petition)**

24 The Ninth Circuit identified three reasons to require exhaustion before entertaining  
25 a habeas petition. See *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s  
26 “expertise” makes its “consideration necessary to generate a proper record and reach a  
27 proper decision.” *Id.* (quoting *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).  
28 Second, excusing exhaustion encourages “the deliberate bypass of the administrative

1 scheme.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, “administrative review is  
2 likely to allow the agency to correct its own mistakes and to preclude the need for judicial  
3 review.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*,  
4 488 F.3d at 815. The Court should dismiss the Petition. “Exhaustion is generally required  
5 as a matter of preventing premature interference with agency processes, so that the agency  
6 may function efficiently and so that it may have an opportunity to correct its own errors, to  
7 afford the parties and the courts the benefit of its experience and expertise, and to compile a  
8 record which is adequate for judicial review.” *Global Rescue Jets, LLC v. Kaiser Foundation*  
9 *Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S.  
10 749, 765 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for  
11 the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145.

14 Petitioner also asserts an APA claim. Civil APA claims are not cognizable in the  
15 habeas context *See, e.g., Mesina v. Wiley*, 352 F. App’x 240, 241-42 (10th Cir. 2009) (holding  
16 that petition asserting APA claim “does not state a habeas claim”).

17 In this case, Petitioner’s APA claim fails as a matter of law. Furthermore, Petitioner  
18 received a detailed Decision to continue his detention by ICE that specifically outlined the  
19 reasoning for his continuing detention and that he had been issued a travel document by  
20 the Government of Turkey and removal is pending to a third country removal and that ICE  
21 has reason to believe there’s a significant likelihood that his removal will occur in the  
22 reasonably foreseeable future. See Exhibit G. Based on the evidence, Petitioner was  
23 afforded an opportunity to be heard and was granted a withholding of removal to Turkey  
24 and ICE is now in the process of finding an alternative country that he can be removed to.

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