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8 *Attorneys for the Federal Respondents*

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

11 MERVEN TOOY,

12 Petitioner,

13 v.

14 THE UNITED STATES OF AMERICA,
Kristi NOEM, in her Official Capacity,
15 Secretary of the Department of Homeland
Security; Pamela J. BONDI, in her Official
16 Capacity, Attorney General, Department of
Justice; Kerri Ann QUIHUIS, in her Official
17 Capacity, ICE Field Office Director,
Detention and Removal, Las Vegas, Nevada
18 (ICE Local); Michael BERNACKE, in his
Official Capacity, Field Office Director, Salt
19 Lake City Field Office, U.S. Immigration
and Customs Enforcement; Patrick J.
20 LECHLEITNER, in his Official Capacity,
Acting Director, Immigration & Customs
21 Enforcement; John MATTOS, in his Official
Capacity, Warden of Immigration Detention
22 Facility, Nevada Southern Detention Center,

23 Respondents.

Case No. 2:25-cv-02286-CDS-BNW

**Federal Respondents' Response to
Petition for Writ of Habeas Corpus**

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25 **I. Introduction**

26 Federal Respondents, the United States of America, Kristi Noem, Pamela J. Bondi,
27 Kerri Ann Quihuis, Michael Bernacke, and Patrick J. Lechleitner, through counsel, Sigal
28 Chattah, First Assistant United States Attorney for the District of Nevada, and Summer A.

1 Johnson, Assistant United States Attorney, hereby file this response to the Petition for Writ
2 of Habeas Corpus filed by Petitioner Mervin Tooy (“Petitioner”). As explained herein,
3 Petitioner’s continued detention is lawful under statutory authority and Supreme Court
4 precedent, which allow for such detention after a final order of removal. Respondents move
5 to dismiss the petition, or alternatively, request that the Court stay this matter pending
6 additional proceedings in furtherance of Petitioner’s removal.

7 **II. Factual Background**

8 Petitioner is a native and citizen of Suriname. ECF No. 4 at ¶9. He is currently
9 detained at the Nevada Southern Detention Center. *Id.* ¶8. At an unknown time and
10 unknown place, Petitioner entered the United States as a refugee. *Id.* ¶23. On September 4,
11 2020, an Immigration Judge ordered that Petitioner be removed. *See* Exhibit A.

12 On information and belief, on February 26, 2025, Petitioner was convicted for the
13 offence of trespass. On or about May 5, 2025, Petitioner was taken into DHS custody. ECF
14 No. 4 at ¶9. DHS obtained travel documents to effectuate Petitioner’s removal to Suriname
15 and scheduled his removal for July 2025. On June 27, 2025, Petitioner filed a petition for
16 review with the Ninth Circuit Court of Appeals, which issued a temporary stay of
17 removal.¹ On or about September 25, 2025, the Ninth Circuit Court of Appeals dismissed
18 the petition for review. *See* Exhibit B. Thereafter, DHS rescheduled Petitioner’s removal for
19 mid-December; that removal had to be cancelled because of flight unavailability and will be
20 rescheduled.

21 Petitioner filed this action on November 18, 2025, including a Petition for Writ of
22 Habeas Corpus. *See* ECF Nos. 1, 1-1. Federal Respondents have been ordered to respond
23 by December 23, 2025. ECF No. 16.

24 **III. Argument**

25 **A. ICE is Authorized to Detain and Deport Petitioner**

26 ICE can lawfully detain Petitioner because he is subject to a final order of removal
27 and can be detained under 8 U.S.C. § 1231(a)(6). Second, following Supreme Court

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¹ *Tooy v. Bondi*, Case No.:25-4022 (9th Cir.), ECF No. 2.

1 precedent, any claim that his detention violates the Due Process Clause is not cognizable or
2 well-founded at this point in his detention.

3 **1. ICE Lawfully Detained Petitioner Pursuant to 8 U.S.C. § 1231(a).**

4 ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the
5 detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs
6 immigration authorities to remove an individual with a final order of removal within a
7 period of 90 days, which is known as the "removal period." During the removal period,
8 ICE must detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period
9 expires, ICE can either release an individual pursuant to an Order of Supervision as
10 directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue
11 detention beyond the removal period for three categories of individuals: (i) those who are
12 inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to
13 certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii)
14 those whom immigration authorities have determined to be a risk to the community or
15 "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

16 Petitioner is outside the initial 90-day mandatory removal period which commenced
17 following his order of removal on September 29, 2020. However, he is still eligible for ICE
18 detention beyond the initial ninety days as he is subject to 8 U.S.C. § 1231(a)(6)(A) and is
19 not entitled to a bond hearing under § 1231(a)(6). *See Johnson v. Arteaga-Martinez*, 596 U.S.
20 573, 574, 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings
21 before immigration judges or burdens of proof"). Petitioner's detention is therefore lawful
22 under § 1231(a)(6) and this Court should dismiss his Petition.

23 **2. Petitioner's Habeas Petition does not show there is no significant likelihood of**
24 **removal in the reasonably foreseeable future.**

25 As the Court explained in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), detention
26 beyond the 90-day removal period is only justified when it is "reasonably necessary" to
27 effectuate removal. After six months, the burden shifts to the petitioner to show that there
28 is "good reason to believe that there is no significant likelihood of removal in the

1 reasonably foreseeable future” before the burden reverts to the government to rebut that
2 showing. *Id.* However, in *Zadvydas*, the Supreme Court cautioned that even a detention
3 beyond the six-month period “does not mean that every alien not removed must be released
4 after six months. To the contrary, an alien may be held in confinement until it has been
5 determined that there is no significant likelihood of removal in the reasonably foreseeable
6 future.” 533 U.S. at 701. The Supreme Court’s interpretation of 8 U.S.C. § 1231(a)(6) in
7 *Zadvydas* aims to protect against the indefinite detention of aliens who the government is
8 unable to remove — those in “removable-but-unremovable limbo.” *Jama*, 543 U.S. at 347.
9 The Supreme Court has recognized that “detention during deportation proceedings [is] a
10 constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523
11 (2003). When evaluating “reasonableness” of detention, the touchstone is whether an
12 alien’s detention continues to serve “the statute’s basic purpose, namely, assuring the
13 alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. To set forth a
14 Constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test.
15 *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that “*Zadvydas*, largely,
16 if not entirely forecloses due process challenges to § 1231 detention apart from the
17 framework it established.”).

18 Petitioner’s *Zadvydas* claim fails because Petitioner has not met his initial burden of
19 showing there is no significant likelihood of removal in the reasonably foreseeable future.
20 To the contrary, DHS has obtained travel authorizations from Suriname and is currently
21 awaiting the availability of transport to effectuate the removal. As result, there is no
22 “reason to believe there is no significant likelihood of removal in the reasonably foreseeable
23 future.” *Zadvydas*, 533 U.S. at 701; *see Rene v. Sec’y Of Dep’t Of Homeland Sec.*, No. 06-0336
24 JAG, 2007 WL 708905, at *4 (D.N.J. Mar. 5, 2007) (“To carry his burden, Petitioner must
25 present evidence beyond his own speculation.”); *cf. James v. Lowe*, No. 3:23-CV-1862, 2024
26 WL 1837216, at *3 (M.D. Pa. Apr. 26, 2024) (rejecting “unsupported contentions” and
27 speculation that “it could take ‘years’ for” removal).

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1 Furthermore, the absence of an exact date of Petitioner's removal does not
2 undermine the conclusion that there is still a significant likelihood of removal in the
3 reasonably foreseeable future. The Third Circuit has specifically held that removal remains
4 "reasonably foreseeable" under *Zadvydas* even when the detention lacks a specific end date.
5 See *Castellanos v. Holder*, 337 F. App'x 263 (3d Cir. 2009). In *Castellanos*, the petitioner's
6 removal order was reinstated, and his case was remanded to an immigration judge to
7 conduct full withholding-of-removal proceedings. See *id.* at 264–67. The Third Circuit
8 upheld the district court's rejection of the petitioner's *Zadvydas* claim that his removal was
9 no longer reasonably foreseeable (he had been detained for over six months) simply
10 because the execution of his removal order was contingent on the resolution of a claim for
11 humanitarian protection, the end date of which was unknown. See *id.* at 268 ("While
12 Castellanos' detention lacks a certain end date, the end is still reasonably foreseeable
13 completion of removal proceedings.").

14 Petitioner's due process challenge fails because there is no non-speculative
15 indication in the record that his removal is not reasonably foreseeable. DHS has twice
16 scheduled Petitioner's removal. The first removal was cancelled because of a stay entered
17 by the Ninth Court of Appeals, and the second was cancelled because of flight
18 unavailability. Accordingly, because the record establishes that his removal is *reasonably*
19 *foreseeable*, his due process challenge lacks merit and the Petition should be denied.

20 **B. Petitioner's Request for Injunctive Relief Fails Because He Cannot Establish a**
21 **Likelihood of Success on the Merits**

22 In his Petition, Petitioner alternatively argues for the Court to issue injunctive relief
23 by "issu[ing] an emergency injunction ordering his immediate release from ICE custody or,
24 in the alternative, a constitutionally adequate bond hearing." ECF No. 4, at 16. Petitioner
25 is entitled to neither.

26 In general, the showing required for a temporary restraining order is the same as
27 that required for a preliminary injunction. See *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*,
28 240 F.3d 832, 839, n. 7 (9th Cir. 2001). To prevail on a motion for a preliminary

1 injunction, a plaintiff must “establish that he is likely to succeed on the merits, that he is
2 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
3 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res.*
4 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken v. Holder*, 556 U.S. 418, 426 (2009).

5 Plaintiffs must demonstrate a “substantial case for relief on the merits.” *Leiva-Perez*
6 *v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When “a plaintiff has failed to show the
7 likelihood of success on the merits, we need not consider the remaining three [Winter
8 factors].” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

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

20 **1. Petitioner Cannot Establish a Likelihood of Success on the Merits that his**
21 **Detention Violates his Due Process**

22 As discussed in Section III.A.2, in *Zadvydas*, the Supreme Court construed § 1231 “to
23 contain an implicit ‘reasonable time’ limitation, the application of which is subject to federal-
24 court review.” 533 U.S. at 682. When a removable alien is detained beyond this reasonable
25 time and “removal is not reasonably foreseeable, the court should hold continued detention
26 unreasonable.” *Id.* at 699. The Court adopted a six-month period of presumptive
27 reasonableness and confirmed that “an alien may be held in confinement until it has been
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1 determined that there is no significant likelihood of removal in the reasonably foreseeable
2 future.” *Id.* at 710.

3 Nothing in the record suggests, beyond speculation, that his removal is not
4 reasonably foreseeable. The only obstacles to removing Petitioner thus far have been his
5 own appeal leading to a Court-ordered stay, and temporary flight unavailability. Given that
6 Petitioner’s removal to Suriname is reasonably foreseeable, Petitioner’s request for
7 injunctive relief must fail as he cannot show a likelihood of success on the merits.

8 **2. Petitioner Has Failed to Show an Irreparable Harm.**

9 To prevail on their request for injunctive relief, Petitioners must demonstrate
10 “immediate threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674
11 (9th Cir. 1988) (citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d
12 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is
13 insufficient. *See Winter*, 555 U.S. at 22. “Issuing a preliminary injunction based only on a
14 possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization
15 of injunctive relief as an extraordinary remedy that may only be awarded upon a clear
16 showing that the plaintiff is entitled to such relief.” *Id.* Here, because Petitioner’s alleged
17 harm “is essentially inherent in detention, the Court cannot weigh this strongly in favor of”
18 Petitioner. *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *10 (N.D.
19 Cal. Dec. 24, 2018).

20 **3. Factors Three and Four also Weigh against Petitioner.**

21 When “the government is a party, [courts] consider the balance of the equities and
22 the public interest together.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). And “[i]n
23 exercising their sound discretion, courts of equity should pay particular regard for the public
24 consequences in employing the extraordinary remedy of injunction.” *Weinberger v. Romero-*
25 *Barcelo*, 456 U.S. 305, 312 (1982). Here, an adverse decision would negatively impact the
26 public interest by jeopardizing “the orderly and efficient administration of this country’s
27 immigration laws” by requiring “the Court to severely restrict the discretion of the Attorney
28 General.” *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for*

1 *Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers
2 irreparable injury whenever an enactment of its people or their representatives is
3 enjoined.”). The public has an interest in the government’s enforcement of its laws. *See, e.g.,*
4 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he district court should
5 give due weight to the serious consideration of the public interest in this case that has
6 already been undertaken by the responsible state officials in Washington, who unanimously
7 passed the rules that are the subject of this appeal.”). As with the irreparable harm analysis,
8 the “determination of where the public interest lies also is dependent on the determination
9 of the likelihood of success on the merits of the [constitutional] challenge.” *Phelps-Roper v.*
10 *Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), overruled on other grounds by *Phelps-Roper v. City*
11 *of Manchester, Mo.*, 697 F.3d 685, 690 (8th Cir. 2012). While it is “always in the public
12 interest to protect constitutional rights,” *id.*, when, as here, Petitioner has not shown a
13 likelihood of success on the merits of that claim, that presumptive public interest evaporates.
14 *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Accordingly, Petitioner has not
15 established that he merits an injunction, and the Court should deny this request.

16 **IV. Conclusion**

17 For the foregoing reasons, Respondents respectfully request that the Court deny
18 Petitioner’s Petition for Writ for Habeas Corpus and dismiss the Petition, as Petitioner’s
19 detention is lawful under 8 U.S.C. § 1231 and Supreme Court precedent. *See Rawahna v.*
20 *AG of the United States*, No. 1:18-cv-175, 2018 U.S. Dist. LEXIS 101634, at *12 (S.D. Ohio
21 June 18, 2018) (“Therefore, the instant petition should be dismissed without prejudice to
22 petitioner’s ability to apply for future relief if circumstances change.”).

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1 In the alternative, Respondents request that the Court stay this matter pending
2 further proceedings in furtherance of Petitioner's removal to Suriname. Moreover, given
3 that Petitioner has failed to show that his removal is not reasonably foreseeable,
4 Petitioner's request for injunctive relief should be denied as he cannot establish a likelihood
5 of success on the merits.

6 Respectfully submitted this 23rd day of December 2025.

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8 TODD BLANCHE
9 Deputy Attorney General of the United States
10 SIGAL CHATTAH
11 First Assistant United States Attorney

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/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney

1 Certificate of Service

2 I, Summer A. Johnson, hereby certify that a copy of the foregoing **Respondent's**
3 **Response to Petition for Writ of Habeas Corpus** was served via the CM/ECF Electronic
4 File and Serve system, and to the following individuals by the stated service methods:

5
6 *Via U.S. First Class Mail:*

7 Mervyn Tooy
8 Alien No. 
9 Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump NV 89060

10 Dated this 23rd day of December 2025.

11
12 */s/ Summer A. Johnson*
13 SUMMER A. JOHNSON
14 Assistant United States Attorney