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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HAMED SALIMABADI,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA J. BONDI, in her official capacity as Attorney General of the United States; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director for U.S. Immigration and Customs; JASON KNIGHT, in his official capacity as Acting Field Office Director, Salt Lake City Field Office Director, U.S. Immigration & Customs Enforcement; MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT JOHN MATTOS, in his official capacity as Warden, Nevada Southern Detention Facility,

Respondents.

Case No. 2:25-cv-02508-JAD-DJA

Federal Respondents' Response to Motion for Temporary Restraining Order

Federal Respondents, through undersigned counsel, hereby file their response to Petitioner David Charles Bunnell's motion for temporary restraining order. Petitioner's motion should be denied because his detention pending removal is authorized under 8

U.S.C. § 1231(a)(6) and does not violate his due process rights. In addition, his detention is not unconstitutionally prolonged under the Supreme Court Decision, but rather reasonable pursuant to the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Finally, Petitioner has not shown that he is entitled to an injunctive relief. This response is supported by the following memorandum of points and authorities.

Respectfully submitted this 6th day of January 2026.

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney

/s/ Virginia T. Tomova
VIRGINIA T. TOMOVA
Assistant United States Attorney

Memorandum of Points and Authorities

Petitioner Salimabadi's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6). And it is not unconstitutionally prolonged under the Supreme Court's decision in *Zadvydas*, 533 U.S. 678. Rather, the detention is "presumptively reasonable" under the Supreme Court's decision. *See id.* at 701. Petitioner, however, has not carried his burden of demonstrating there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Notwithstanding this precedent, Petitioner claims his detention is unconstitutionally indefinite because there is no reasonable prospect of removal in the reasonably foreseeable future to the country designated by the Immigration Judge. *See* ECF No. 5, p. 8.

Petitioner is subject to a final removal order, dated February 23, 2006, following a finding by an IJ that the Petitioner is deportable because he is not a citizen of the United States, and his conviction on January 15, 2002 in the Superior Court of California, for grand theft involving rifles and handguns, champagne and wine in violation of California Penal Code, § 487(a). *See* Final Removal Order, attached as Exhibit A; *see also* Notice to Appear, attached as Exhibit B. Petitioner did not appeal the IJ's order of removal, and such order became final on March 23, 2006. Subsequently, Petitioner was placed on supervised release

by Department of Homeland Security (DHS). A condition of his release was that he had to make good faith efforts to obtain travel documents from Iran to effectuate his removal. *See* Order of Supervision, attached as Exhibit C. After 23 years since his final removal order, there does not appear to be any indication that Petitioner has made any efforts to obtain such travel documents from Iran. He has not provided any written requests that he had placed with the Iranian Embassy or Consulate, as required by the Order of Supervision. Exhibit C. Subsequently, DHS revoked his supervised release and detained him pursuant to the final removal order. *See* Warrant of Removal/Deportation, attached as Exhibit D. A ll the above is lawful and in compliance under the INA. Currently, DHS is making good faith efforts to obtain travel documents from the Iranian Consulate or Embassy so that this Petitioner can be removed. Petitioner has not made any good faith efforts to obtain such travel documents, which violates the Order of Supervision. Exhibit C. It is common that when DHS detains individuals like Petitioner who are detained subject to final removal orders, such Petitioners do not attempt to comply with the conditions under the Order of Supervision and continue to carry on with their daily lives – disrespecting the laws of the United States. Most of the Petitioners also conveniently hide their criminal histories before the Court, like this Petitioner. In his motion, Petitioner makes generalized assumptions of national origin bias without any evidence and implies that he falls within the category of Iranian nationals who have "no criminal history or pending charges." ECF No. 5, p. 5. His criminal record proves otherwise. *See* I-213, attached as Exhibit E.

Contrary to Petitioner's arguments, Iran has recently accepted its citizens who had been deported from the United States in the latest months with the most recent acceptance on or before December 7, 2025. Petitioner now brings a motion for a temporary restraining order ("TRO") or preliminary injunction, seeking immediate release. Petitioner cannot show a likelihood of success on the merits, because the procedures followed by DHS regarding Petitioner's supervised release, revocation, and detention complied with the INA and relevant regulations. Petitioner signed the order of supervision recognizing that he is required to meet certain conditions and requirements. Exhibit C. Petitioner was provided

with the order of supervision and an opportunity to review it. In addition, there is no violation of the Administrative Procedure Act ("APA") or Petitioner's due process right.

Contrary to Petitioner's arguments, the evidence demonstrates that DHS and U.S. Immigration and Customs Enforcement (ICE) are engaged in continuing and progressing efforts to effectuate his removal to Iran, pursuant to his final removal order. *Id.* Petitioner's assertions that ICE cannot effectuate his removal are speculative. For these reasons, the Court should deny the *Zadvydas* claim in his motion for TRO.

BACKGROUND

I. Petitioner's Immigration and Criminal History

Petitioner is a 44-year-old alien from Iran residing in this country, subject to final removal order. Exhibits A and B. Petitioner has a criminal conviction on January 15, 2002, in the Superior Court of California, for grand theft involving rifles and handguns, champagne and wine in violation of California Penal Code, § 487(a). Exhibit E.

Petitioner did not appeal the IJ's order of removal, and such order became final on March 23, 2006. Subsequently, Petitioner was placed on supervised release by Department of Homeland Security (DHS). A condition of his release was that he had to make good faith efforts to obtain travel documents from Iran to effectuate his removal. Exhibit C. After 23 years since his final removal order, there does not appear to be any indication that Petitioner has made any efforts to obtain such travel documents from Iran. He has not provided any written requests to DHS/ICE regarding any requests he had placed with the Iranian Embassy or Consulate, as required by the Order of Supervision. Exhibit C. Subsequently, DHS revoked his supervised release and detained him pursuant to the final removal order. Exhibit D. Following expiration of the mandatory 90-day removal period, ICE released Petitioner from custody pursuant to an Order of Supervision. Exhibit C; *see* 8 U.S.C. § 1231(a)(3) ("If the alien does not leave or is not removed within the [90-day] removal period, the alien, pending removal, shall be subject to supervision under regulations" found at 8 C.F.R. §§ 241.4, 241.5). Subsequently, Petitioner was placed on supervised release by DHS Between his release in 2006, and recent re-detention on June 26, 2025, Petitioner was

required to "provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document." Exhibit C. Petitioner also had to "provide ICE with written responses from the Embass[ies] or Consulate[s] regarding [his] request[s]." *Id.* A condition of his release was that Petitioner had to make good faith efforts to obtain travel documents to his home country, Iran. *Id.* Petitioner knew of such conditions upon his release, as he signed the Order of Supervision. *Id.* He was also required to provide copies of written requests he had made to the Iranian Consulate or Embassy about obtaining travel documents. *Id.* He failed to do that for 23 years, as if the final removal order never existed. All the above are violations of the conditions of Petitioner's supervised release. Pursuant to the final removal order and his criminal conviction of grand theft involving handguns and rifles, DHS detained Petitioner. Exhibits D and A.

II. Procedural Background

On December 22, 2025, Petitioner filed a motion for temporary restraining order or preliminary injunction seeking immediate release from custody. ECF No. 5. In the TRO motion, Petitioner asserts that his present detention, which he characterizes as "unlawful," creates a risk of irreparable harm. *Id.*, p. 7. He also claims that his present detention was unlawful under *Zadvydas* because his removal is not reasonably foreseeable. *Id.* Petitioner does not claim in his request for TRO that he has complied with the conditions of the supervised release. He also does not claim that he has provided any written requests to DHS/ICE that he had made any effort to contact the Iranian Embassy or Consulate to obtain travel documents. Instead, he claims that "Iran will not accept him." ECF No. 5, p. 2. These speculative assertions conveniently serve the Petitioner. Pursuant to the Court's order, ECF No. 8, Federal Respondents submit this response to the Petitioner's motion for TRO.

III. Relevant Statutory and Regulatory Background

A. Removal and Detention Under 8 U.S.C. § 1231(a)

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. §

1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). And the mandatory removal period begins on the latest of three possible dates: (1) the date an order of removal becomes "administratively final," (2) the date of the final order of any court that entered a stay of removal, or (3) the date the alien is released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post removal period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how long detention during the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. And the Supreme Court further clarified that a six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

B. Orders of Supervision

In the event the government does not further detain and instead releases the alien at the end of the 90-day mandatory removal period, the government must do so under conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that an alien who "does not leave or is not removed within the removal period … shall be subject to

supervision"); *see also* 8 C.F.R. §§ 241.4(j); 241.5. Regulations promulgated pursuant to the INA require that conditions of supervised release include reporting to an immigration officer; making "efforts to obtain a travel document and assist[ing] the [government] in obtaining a travel document"; reporting for physical and mental examinations; obtaining advance approval of travel; and providing ICE with written notice of any address changes. *See* 8 C.F.R. § 241.5(a).

If the alien violates a condition of release, the government can revoke the order of supervision and return the alien to custody. *See* 8 C.F.R. § 241.4(l). In that scenario, the government must notify the alien of "the reasons for revocation," and "conduct an initial interview promptly" to give the alien "an opportunity to respond to the reasons for revocation stated in the notification." *See id.* § 241.4(l)(1). If the alien is not released after the initial interview, there is a subsequent review process, one which entails a records review and scheduling of an interview which ordinarily takes place within three months of the revocation of release. *Id.* § 241.4(l)(3). The final review includes an evaluation of any disputed facts, and a decision as to whether the facts as determined support revocation and further denial of release. *Id.* Thereafter, the government conducts annual custody reviews in accordance with 8 C.F.R. §§ 241.4(i), (j), and (k). *Id.*

C. Suspension of Removal Under 8 U.S.C. § 1231(a)(1)(C)

As noted above a separate basis for detention of aliens with final orders of removal is via an extension of the removal period in circumstances where the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8 U.S.C. § 1231(a)(1)(C). In such cases, the government must serve the alien a "Notice of Failure to Comply," which sets forth the relevant statutory provisions in play (8 U.S.C. §§ 1231(a)(1)(C), 1253(a)) and provides "an explanation of the necessary steps that the alien must take in order to comply with the statutory requirements." 8 C.F.R. § 241.4(g)(5)(ii). The government must also advise the alien that the "Notice of Failure to Comply shall have the effect of extending the removal period as provided by law, if the removal period has not yet expired," and that the government is not required to complete

any scheduled custody reviews under 8 C.F.R. § 241.4 until the alien has "demonstrated compliance with the statutory obligations." *Id.* § 241.4(g)(5)(iii).

D. Removal to Third Country

As a general matter, aliens ordered removed "may designate one country to which [he or she] wants to be removed," and DHS "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or her designated country, including if "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien "shall" be removed to his or her country of nationality or citizenship, unless the country "is not willing to accept" the alien." *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). In addition, DHS "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of [his or her] race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

LEGAL ARGUMENT

I. The Court Should Deny the Motion for Temporary Restraining Order

The Court should deny the request for temporary restraining order because Petitioner cannot satisfy the factors which warrant that relief. Rule 65 of the Federal Rules of Civil Procedure governs the issuance of TROs and preliminary injunctions — either of which is an "extraordinary remedy, which should be granted only in limited circumstances." *Novartis*

Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co., 290 F.3d 578, 586 (3d Cir. 2002). To obtain this extraordinary remedy, Petitioner must demonstrate: (1) a likelihood of success on the merits; (2) that he or she will suffer irreparable harm by denial of the relief; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). The first two factors are "are the most critical." *Relly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (quotations omitted). Moreover, where (as here), a petitioner is seeking mandatory injunctive relief disrupting the status quo, such as immediate release from custody, the petitioner must satisfy a "particularly heavy burden" and show a "substantial"—not just reasonable—likelihood of success on the merits and an "indisputably clear" right to relief. *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020); *see also Kim v. Hanlon*, 99 F.4th 140, 155 (3d Cir. 2024) ("[O]ver and above the showing required to maintain the status quo . . . a plaintiff must show a substantial likelihood of success on the merits and that [one's] right to relief is indisputably clear[.]" (quotation omitted)). Petitioner fails to make these showings here. In addition, the claims fail on the merits, because Petitioner cannot show a violation of either the APA or Due Process Clause. For these reasons, the Court should nevertheless deny the TRO motion because Petitioner cannot show a "substantial likelihood of success on the merits" or right to relief which is "indisputably clear." *See Kim*, 99 F.4th at 155; *Hope*, 972 F.3d at 320.

a. Petitioner is Not Substantially Likely to Succeed on the Merits.

i. *Petitioner's Detention is Lawful and the "SLRRFF" Inquiry is Premature.*

As set forth above, Petitioner cannot show a likelihood of success on the merits, much less a substantial likelihood. At the outset, Petitioner's present detention is presumptively reasonable under *Zadvydas*, so any prolonged detention claim is premature and fails to state a claim. The INA further provides that aliens who are inadmissible under 8 U.S.C. § 1182 may be detained beyond the 90-day period pending removal. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(a)(1), (4). Petitioner has been detained pursuant to a final removal order,

after his supervised release was revoked. In *Zadvydas*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit an alien's detention beyond the period "reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689. And the Court held that a detention for six months pursuant to a final removal order is "presumptively reasonable." *Id.* Based on this precedent, courts routinely reject prolonged detention claims where, as here, a petitioner has been detained pursuant to a final removal order for less than six months. *See Arias Gudino v. Lowe*, 785 F. Supp. 3d 27 (M.D. Pa. 2025) (citing *Alvarez v. U.S. Dep't of Homeland Sec.*, No. CIV.A. 06-3320 (MLC), 2006 WL 2385119, at *5 (D.N.J. Aug. 17, 2006) (denying habeas challenge to detention when petitioner had not been detained for six months and observing, "[o]nly if DHS continues to detain Petitioner beyond the six-month period determined to be presumptively reasonable … will [the] habeas claim mature."[1] In this case, although Petitioner has been in custody for a little over 6 months pursuant to a final removal order, DHS is making reasonable efforts to obtain travel documents for the Petitioner to Iran, even though Petitioner has not provided any evidence to show that he has made such good faith effort as required under the order of supervision. His removal to Iran is within the reasonably foreseeable future as the Iranian government has started to accept its citizens, who have been deported by the United States. Thus, the detention is lawful and the *Zadvydas* claim is premature.

ii. *There is Significant Likelihood of Removal to Iran in the Reasonably Foreseeable Future.*

Even if it were not premature, Petitioner's *Zadvydas* claim fails because Petitioner has not met his initial burden of showing there is no significant likelihood of removal in the

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[1] *See also, e.g.*, *Koboi v. Lowe*, No. 3:24-CV-12, 2024 WL 310211, at *2 (M.D. Pa. Jan. 26, 2024) ("Thus, where a removable alien has been detained under § 1231 for less than six months following a final order of removal, his [or her] challenge must denied."); *Kevin A. M. v. Warden, Essex Cnty. Corr. Facility*, No. CV 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021) ("Pursuant to *Zadvydas*, any challenge to § 1231(a) for less than six months must be dismissed as premature."); *accord Alex B. K. K. v. Russo*, No. CV 21-9187 (SDW), 2021 WL 4704971, at *2 (D.N.J. Oct. 8, 2021) (same); *Fabian A. v. Dep't of Homeland Sec.*, No. CV 21-1384 (SDW), 2021 WL 3486905, at *2 (D.N.J. Aug. 9, 2021) (same); *Casimiro S. v. Decker*, No. CV 20-7414 (SDW), 2020 WL 5562912, at *3 (D.N.J. Sept. 17, 2020); *Charles U.-A. v. Anderson*, No. CV 20-251 (SRC), 2020 WL 2989083, at *3 (D.N.J. June 4, 2020) (same); *Fernanda J. v. Barr*, No. CV 19-14609 (SRC), 2019 WL 6975061, at *2 (D.N.J. Dec. 19, 2019); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (holding six-month period "must have expired at the time [the petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."). The cases Petitioner relies on to argue otherwise are non-binding out-of-district and out-of-circuit decisions.

reasonably foreseeable future. In *Zadvydas*, the Supreme Court cautioned that even a detention beyond the six-month period "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. The Supreme Court's interpretation of 8 U.S.C. § 1231(a)(6) in *Zadvydas* aims to protect against the indefinite detention of aliens who the government is unable to remove—those in "removable-but-unremovable limbo." *Jama*, 543 U.S. at 347. That is not this case.

1. Petitioner Has Not Met His Initial Burden of Demonstrating Good Reason to Believe There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future.

The Supreme Court has held that, after the six-month period, the alien bears the initial burden to demonstrate "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.; *see Barenboy v. Att'y Gen. of U.S.*, 160 F. App'x 258, 261 n.2 (3d Cir. 2005) ("Once the six-month period has passed, the burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." (quotation omitted)). Here, Petitioner has failed to carry this initial burden. Petitioner claims that his removal is not reasonably foreseeable because "Iran will not accept him." ECF No. 5, p. 2. However, Petitioner's statements are too speculative and conclusory to satisfy Petitioner's burden of demonstrating "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701; *see Rene v. Sec'y Of Dep't Of Homeland Sec.*, No. 06-0336 JAG, 2007 WL 708905, at *4 (D.N.J. Mar. 5, 2007) ("To carry his burden, Petitioner must present evidence beyond his own speculation."); *cf. James v. Lowe*, No. 3:23-CV-1862, 2024 WL 1837216, at *3 (M.D. Pa. Apr. 26, 2024) (rejecting "unsupported contentions" and speculation that "it could

take 'years' for" removal). Petitioner is subject to a final removal order. Exhibit A. His claim that "Iran will not accept him" is insufficient to carry Petitioner's burden of showing there is no significant likelihood of removal in the reasonably foreseeable future. Recent developments between the Iranian and United States government shows that Iran has accepted approximately 100 Iranian citizens who have been deported by the United States. Whether ICE was unable to secure travel documents or identify an alternate country during the initial 90-day period from 2006 to June 2025 also has no bearing on ICE's present efforts. Nor does the fact that Petitioner's removal will only take place after completion of the *D.V.D.* notice-and-opportunity protections render his detention indefinite. *Cf. Lojo v. Garland*, No. 6:22-CV-06340 EAW, 2023 WL 2867791, at *4 (W.D.N.Y. Apr. 10, 2023) (finding petitioner did not satisfy initial burden because he "has come forward with no evidence to suggest that he cannot be swiftly removed upon the conclusion of his withholding-only proceedings, assuming he is not successful thereon."). Furthermore, the absence of an exact date of Petitioner's removal does not undermine the conclusion that there is still a significant likelihood of removal in the reasonably foreseeable future. The Third Circuit has specifically held that removal remains "reasonably foreseeable" under *Zadvydas* even when the detention lacks a specific end date. *See Castellanos v. Holder*, 337 F. App'x 263 (3d Cir. 2009). In *Castellanos*, the petitioner's removal order was reinstated, and his case was remanded to an immigration judge to conduct full withholding-of-removal proceedings. *See id.* at 264–67. The Third Circuit upheld the district court's rejection of the petitioner's *Zadvydas* claim that his removal was no longer reasonably foreseeable (he had been detained for over six months) simply because the execution of his removal order was contingent on the resolution of a claim for humanitarian protection, the end date of which was

unknown. *See id.* at 268 ("While Castellanos' detention lacks a certain end date, the end is still reasonably foreseeable completion of removal proceedings.").

iii. There is No Significant Likelihood of Removal to a Third Country in the Reasonably Foreseeable Future

Petitioner claims that ICE has not identified any third country willing to accept him. ECF No. 5, p. 4. However, currently DHS has not engaged in efforts to effectuate Petitioner's removal to any other country but Iran, to comply with the final removal order. Exhibit A. Thus, Petitioner's statements are speculative at best. The only efforts DHS has shown is removal of the Petitioner to Iran, pursuant to the final removal order. Only if the alien makes the initial showing must the government "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310–11 (10th Cir. 2004) (stating "onus is on the alien to provide [] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that shown.' (internal citation omitted)). Here, even if the Court were to conclude Petitioner met his burden, Respondents have rebutted that showing because the evidence establishes that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future to Iran. As discussed above, DHS is making good faith effort to obtain Petitioner's travel documents from the Iranian Consulate. Recently, Iran has started to accept deported Iranian citizens. Accordingly, given the status of the efforts underway, the Petitioner's removal is significantly likely to occur in the reasonably foreseeable future.

The Supreme Court has stressed that the reasonably-foreseeable inquiry requires taking "appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive [ICE] efforts to enforce this complex statute, and the Nation's need to speak with one voice in immigration matters." *Zadvydas*, 533 U.S. at 700. In addition, courts must "recognize Executive Branch primacy in foreign policy matters," and "grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.*

Taking these considerations into account, the Court adopted a six-month presumptively reasonable period "to limit the occasions when courts will need to make" the type of "difficult judgments" inherent in reviewing this area of "primary Executive branch responsibility." *Id.* at 700-01. In this case, where the government is authorized to detain Petitioner for the "period reasonably necessary to bring about [his] removal from the United States," *Johnson*, 596 U.S. at 579 (cleaned up), his detention is within the presumptively reasonable six-month period, *see supra* p. 7-9, and ICE is actively engaged in continuing efforts to effectuate Petitioner's not third-country removal, but removal to Iran it would be premature to conclude that Petitioner's detention exceeds the time reasonably necessary to secure his removal or that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. In addition, the claims fail on the merits, because Petitioner cannot show a violation of either the APA or Due Process Clause. For these reasons, the Court should deny the TRO motion because Petitioner cannot show a "substantial likelihood of success on the merits" or right to relief which is "indisputably clear." *See Kim*, 99 F.4th at 155; *Hope*, 972 F.3d at 320

b. Petitioner Cannot Establish Irreparable Harm.

Petitioner also falls short of establishing that "irreparable injury is likely in the absence of" a TRO. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In his TRO motion, Petitioner claims that his detention, deprivation of due process, psychological harm and defeat of judicial review satisfy his irreparable harm requirement. ECF No. 5, p. 11. With respect to the former, Federal Respondents have demonstrated that Petitioner's detention pursuant to a final removal order is neither prolonged nor unlawful. Since the issuance of the final order of removal, Petitioner has not filed any applications for relief from such removal. Nor has he made any apparent effort to assist in his orderly departure from the United States. Instead, he chose to commit grand theft involving handguns and rifles. Petitioner, moreover, had adequate notice of the conditions of his supervised release, including the specific condition that he "make good faith efforts to secure a travel document" to effectuate his removal, "and provide proof of [such] efforts to ICE." Exhibit

C. Petitioner was on notice that he had to make written inquiries to the Iranian "Embassies or Consulates requesting the issuance of a travel document," as well as provide ICE with copies of "written responses from the Embassy or Consulate regarding [any such] request[s]. *Id.* Petitioner had more than 23 years to comply with these requirements, and multiple opportunities to seek clarification on them or challenge their constitutionality. At bottom, ICE's actions in this case are nothing more than an attempt to enforce a final order of removal in accordance with the law. There is no constitutional or APA violation, and Petitioner cannot show irreparable harm based on his lawful detention under 8 U.S.C. § 1231.

Petitioner's claim that he will suffer irreparable harm absent an order compelling his release due to concerns over his removal to a third country are unsubstantiated and too speculative to merit issuance of a TRO. *See Moneyham v. Ebbert*, 723 F. App'x 89, 92 (3d Cir. 2018) (explaining irreparable harm must be "actual and imminent, not merely speculative"). As discussed above, there is no indication that DHS intends to effectuate a third country removal of the Petitioner in this case. Petitioner was not asked to contact any other embassies or consulates except the Iranian one to facilitate travel documents. Petitioner cannot show immediate irreparable harm based on the speculative claim that he could be removed to a third country.

c. An Injunction Would Be Contrary to Public Interest.

Where, as here, the government is the responding party, the final two factors — balance of the equities and public interest — merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh against granting a TRO in this case. There is a significant public interest in lawful enforcement of the immigration laws. *Id.* Here, as discussed above, the government's detention of Petitioner pending removal is a valid exercise of its authority under the INA and its regulations. And issuing a TRO seeking release — given the absence of a strong showing of success on the merits and immediate irreparable harm — would thwart the "public interest in prompt execution of removal orders." *Id.* at 436. These interests weigh against granting a TRO.

d. The Court Should Require a Bond.

Rule 65(c) of the Federal Rules of Civil Procedure provides that a court may issue a TRO (or preliminary injunction) "only if the movant gives security" for "costs and damages sustained" by the non-moving party in the event the non-moving party is later found to "have been wrongfully enjoined." "'Although the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary.'" *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 210 (3d Cir. 1990) (quoting *Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 103 (3d Cir. 1988), *holding modified by Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421 (3d Cir. 1994)). On March 11, 2025, the President issued a memo requiring federal agencies to seek security when confronted with suits seeking emergency preliminary injunctive relief.[2] Pursuant to that memo, to the extent that the Court grants preliminary injunctive relief in this case, Federal Respondents respectfully request that the Court require Petitioner to provide adequate security.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion for Temporary Restraining Order.

Respectfully submitted this 6th day of January 2026.

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[2] *See* White House Memo, Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/ (last visited Apr. 27, 2025).