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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HASAN TAIFOUR,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, *et al.*,

Respondents.

Case No. 26-cv-00487-LL-DEB

RESPONDENTS' RETURN IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner has filed a habeas petition and motion for a temporary restraining order. ECF Nos. 1, 2. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Syria. Declaration of Eduardo Vasquez ("Vasquez Decl.") at ¶ 3. On December 31, 2024, Petitioner unlawfully entered the United States and was apprehended by U.S. Border Patrol near Calexico, California. *Id.*; First Declaration of Hasan Taifour[1]; ("Taifour Decl.") at ¶ 3; Exhibit 1 (Form I-213, Record of Deportable/Inadmissible Alien).[2] At that time, Petitioner did not have a valid visa or other authorization to enter the United States. Vasquez Decl. at ¶ 3. He was processed as an expedited removal under Section 235(b)(1) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1225(b)(1)) on January 1, 2025. *Id.*; Exhibit 2 (Form I-860, Notice and Order of Expedited Removal).

On January 6, 2025, Petitioner was booked into Immigration and Customs Enforcement (ICE) custody at the Imperial Regional Detention Facility pending removal. Vasquez Decl. at ¶ 4. On or about January 10, 2025, Petitioner claimed fear of returning to Syria and was referred to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview. *Id.* at ¶ 5. USCIS conducted the interview on January 27, 2025, and determined that Petitioner had a credible fear of returning to Syria. *Id.*

On February 3, 2025, a Notice to Appear was served on Petitioner and filed with the Immigration Court, placing Petitioner in removal proceedings under 8 U.S.C. § 1229a. *Id.* at ¶ 6; Exhibit 3 (Form I-862, Notice to Appear). On July 24, 2025, an Immigration Judge ordered Petitioner removed to Syria but granted withholding of

[1] Petitioner's declaration is found at pages 17–18 of ECF No. 1.

[2] The attached Exhibits 1–4 are true copies, with redactions of private and confidential information, of documents obtained from ICE counsel.

removal under INA § 241(b)(3) (8 U.S.C. § 1231(b)(3)). Vasquez Decl. at ¶ 7; Taifour Decl. at ¶ 3; Exhibit 4 (Order of the Immigration Judge). Petitioner and DHS waived appeal, and the order became final on that date. Vasquez Decl. at ¶ 7; Taifour Decl. at ¶ 3.

On July 29, 2025, San Diego Enforcement and Removal Operations (ERO) contacted ERO's Removal and International Operations (RIO) for assistance to identify a third country for removal. Vasquez Decl. at ¶ 8. RIO notified San Diego ERO that efforts to identify an alternate country for removal remain ongoing on the following dates: September 10, 2025; October 20, 2025; and November 13, 2025. *Id.* at ¶ 9. At this time, RIO has not identified a third country where Petitioner may be removed, but removal efforts remain ongoing. *Id.* at ¶ 10.

When a third country is identified for resettlement, standard ICE guidance and procedures provide that an ICE officer will provide written notice to the removable alien of the intended third country removal. *Id.* at ¶ 11. The written notice identifies which country ICE intends to remove the alien to. *Id.* ICE will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. *Id.* In exigent circumstances, ERO may execute a removal order six or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal. *Id.* Once a third country is identified, ICE will provide Petitioner with written notice, and if Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claims. *Id.* at ¶ 12.

III. ARGUMENT

A. Petitioner Fails to Establish Entitlement to a Restraining Order.

Petitioner has not established that he is entitled to a temporary restraining order. He cannot show that he is likely to succeed on the underlying merits of his habeas petition, he has not demonstrated irreparable harm, and the equities do not weigh in his favor.

In general, the showing required for a temporary restraining order is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion for a temporary restraining order, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. "Few interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985).

1. Petitioner is Unlikely to Succeed on the Merits.

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot establish that he is likely to succeed on the underlying merits of his claims because he is properly detained under 8 U.S.C. § 1231(a).

a. Petitioner is lawfully detained.

"Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period under subsection (a)(1)).

Section 1231(a)(6) "authorizes further detention if the Government fails to remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Detention authority under this statute, however, is limited to "a period reasonably necessary to bring about the alien's removal from the United States" and "does not permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 701. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Here, Respondents acknowledge that the six-month period of presumptively reasonable detention has recently passed. However, based on ICE's diligent efforts to locate a third country for Petitioner's removal, as discussed below, Respondents submit that his detention remains lawful because his removal to a third country is significantly likely to occur in the reasonably foreseeable future.

If an individual ordered removed "is not removed to his or her country of choice or citizenship, he or she shall be removed to any of the . . . countries" listed in 8 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007). The enumerated countries are:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.

Id. (quoting 8 U.S.C. § 1231(b)(2)(E)(i)–(vi)). "If removal to any of these countries is 'impracticable, inadvisable, or impossible,' the individual shall be removed to 'another

country whose government will accept the alien into that country.'" *Id.* (quoting 8 U.S.C. § 1231(b)(2)(E)(vii)).

Here, Petitioner was granted withholding of removal to Syria, his country of citizenship. *See* Taifour Decl. at ¶ 3; Vasquez Decl. at ¶ 7; Exhibit 4. Apart from Syria, there appears to be no other country that would meet the definitions under subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears the burden of demonstrating that 'he is in custody in violation of the Constitution or laws or treaties of the United States.'") (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is "impracticable, inadvisable, or impossible," ICE may remove Petitioner to a third country that will accept Petitioner's removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

Recent developments in international relations between the United States and several other countries have made probable ICE's removal of immigrants, like Petitioner, that it previously was unable to remove to third countries. Against this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to detain Petitioner for purposes of enforcing his removal order to a third country. *See* Vasquez Decl. at ¶¶ 8–10.

Since Petitioner's removal order became final on July 24, 2025, ICE has worked as expeditiously as possible to effectuate his resettlement in a third country. Specifically, on July 29, 2025, San Diego ERO contacted RIO for assistance to identify a third country for removal. Vasquez Decl. at ¶ 8. RIO notified San Diego ERO that efforts to identify an alternate country for removal remain ongoing on the following dates: September 10, 2025; October 20, 2025; and November 13, 2025. *Id.* at ¶ 9. At this time, RIO has not identified a third country where Petitioner may be removed, but removal efforts remain ongoing. *Id.* at ¶ 10. Although RIO is still in the process of identifying countries that may be willing to accept Petitioner for removal, the record reflects that ICE is working diligently. *See Zadvydas*, 533 U.S. at 700 (instructing

district courts "to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.").

As courts in this district have found, "evidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." Exhibit 5, *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB, ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner's one year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future); *see also Marquez v. Wolf*, No. 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal"); Exhibit 6, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) ("[T]he record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.").

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing]

proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

b. Petitioner's second claim is unsupported.

Petitioner also asserts that he is afraid that once a third country is identified, ICE will immediately deport him there without being given adequate time to investigate whether he could be persecuted in that country. ICE attests, however, that once a third country is identified, "ICE officer will provide written notice to the removable alien of the intended third country removal. The written notice identifies which country ICE intends to remove the alien to. ICE will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal." Vasquez Decl. at ¶ 11. Thus, Petitioner's concern that he will not receive adequate notice and an opportunity to be heard prior to his third country removal is not borne out by the evidence in this case.

Moreover, Petitioner's claim that he may not be removed to a third country without adequate notice and an opportunity to be heard is subject to ongoing litigation, with the Supreme Court staying an injunction imposed by a district court ordering the government to provide notice and an opportunity to be heard like that requested here. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given the Supreme Court's reversal of that injunction, Respondents' position is that imposition of a similar injunction would be reversed here.

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2. Petitioner Has Not Shown Irreparable Harm.

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. And detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, No. 21-35142, 2021 WL 3082403 (9th Cir. July 21, 2021). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to allegedly unjustified detention itself constitutes irreparable injury.[3] But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-cv-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. April 5, 2019). Moreover, Petitioner's "loss of liberty" is "common to all aliens seeking review of their custody or bond determinations." *Resendiz v. Holder*, No. C 12–04850 WHA, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a temporary restraining order.

Importantly, the purpose of civil detention is facilitating removal, and the government is working to timely remove Petitioner. Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of Petitioner." *Lopez Reyes v. Bonnar*, No. 18-cv-07429-SK, 2018 WL 7474861, at *10

[3] Detention is different than removal. But a removal is also not an inherently irreparable injury. *See Nken*, 556 U.S. at 435.

(N.D. Cal. Dec. 24, 2018).

3. The Balance of Equities Does Not Tip in Petitioner's Favor.

It is well settled that "the public interest in enforcement of the immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (collecting cases); *see Nken*, 556 U.S. at 436 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (simplified). And ultimately, "the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. C 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987).

Here, as explained above, Petitioner cannot succeed on the merits of his claims, and the public interest in the prompt execution of removal orders is significant. The balancing of equities and the public interest thus weigh heavily against granting equitable relief in this case.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's request for injunctive relief and dismiss the petition.

Dated: February 2, 2026

Respectfully submitted,

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