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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, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Regional Detention Center,

Respondents.

No.: 26-CV-487-LL-DEB

Traverse in support of petition for writ of habeas corpus and reply in support of motion for temporary restraining order

[Civil Immigration Habeas, 28 U.S.C. § 2241]

I. Introduction

In their return and opposition, Respondents do not dispute that Hasan Taifour should be released if his "removal is not reasonably foreseeable." *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, *4 (W.D. Tex. Oct. 22, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001)). Instead, Respondents submit documents from Mr. Taifour's immigration case, as well as a declaration from a local ICE officer explaining that:

- Mr. Taifour's withholding of removal and removal order became final on July 24, 2025[1];
- Local ICE sought the help of a division of ICE at headquarters on July 29, 2025, "for assistance to identify a third country for removal";
- The headquarters ICE division informed local ICE that it was working to "identify an alternate country" in September, October, and November 2025;
- "At this time, [headquarters] RIO has not identified a third country where Petitioner may be removed, but removal efforts remain ongoing"; and
- When ICE identifies a third country, it will follow its "standard ICE guidance and procedures," which as summarized in the declaration match several details in the more fulsome third-country removal policy Mr. Taifour submitted to this Court as Exhibit B. ECF No. 5, Declaration of Eduardo Vasquez, ¶¶ 7–12; *see* ECF No. 1, Exhibit B.

[1] That order makes clear that Mr. Taifour was granted withholding but denied asylum due to the "Circumvention of Lawful Pathways" Rule, effective as to those who would otherwise qualify for asylum but who entered the United States between May 2023 and 2025 at a land border without visas or pre-existing permission to enter. *See* ECF No. 5, Exhibit 4 at 2; *see East Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023), *reversed and remanded in East Bay Sanctuary Covenant v. Trump*, 134 F.4th 545 (9th Cir. 2025).

This information does not rebut Mr. Taifour's showing—based on his six months in detention, his receipt of withholding of removal, the extremely small number of people who received such relief who have been removed in the last decade, the lack of ICE's progress in his case, and the process to which he is entitled if ICE ever does identify a third country—that there is no significant likelihood of his removal in the reasonably foreseeable future.

Further, Respondents have no legal response to Mr. Taifour's argument that ICE's current third-country removal policy—to which they intend to subject Mr. Taifour, and the contents of which they agree with Mr. Taifour on—does not provide him "with adequate notice and an opportunity to be heard before removing him to a third country." *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition and enjoining the respondents from removing the petitioner absent the process outlined in *DVD v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025)). Respondents have no legal response to Mr. Taifour's argument that it is proper for this Court to prohibit Respondents from removing him to a third country without first providing him notice of his statutory rights to apply for asylum and withholding from those third countries and a meaningful opportunity to be heard on those claims.

This Court should grant the petition or motion for temporary relief and order immediate release.

II. This Court has jurisdiction.

The government suggests in a paragraph that this Court lacks jurisdiction under 8 U.S.C. § 1252(g). *See* ECF No. 5 at 7–8. Section 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Courts still "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 154 F.4th 989,

996 (9th Cir. 2025).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed." *Id.* at 997. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). The statute does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Instead, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to Mr. Taifour's claims. He challenges violations of ICE's mandatory duties under statutes, regulations, and the Constitution. "Though 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Taifour's] continued detention . . ." *Y.T.D.*, 2025 WL 2675760 at *5.

In short, Mr. Taifour does not challenge whether the government may "execute" his removal under 8 U.S.C § 1252(g)—only whether it may detain him up to the date it does so. This Court has jurisdiction.

III. Claim One: Respondents have not met their burden in response to Mr. Taifour's showing that there good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future.

"[M]ere generalizations, divorced from any documentary support," do not

"suffice for *Zadvydas* purposes." *Azzo*, 2025 WL 3535208 at *4 n.3. The government has offered no more than mere generalizations in this case.

ICE began the process of Mr. Taifour's third-country removal in July2025. ECF No. 3, Declaration of Eduardo Vasquez, ¶ 8. It has not gotten far. One part of ICE has asked for help from another part of ICE. That other part of ICE still "has not identified a third country." *Id.* ¶ 10. It has no timetable for when it will. *Id.*

Azzo is instructive. There, the district court received a similar declaration, also for a habeas petitioner who had received relief from removal to his only country of citizenship under the Convention Against Torture. *Azzo*, 2025 WL 353208 at *1. Upon surveying relevant case law, the court noted that the declaration resulted in an "even weaker evidentiary showing" than in other cases that had still granted *Zadvydas* petitions and ordered immediate relief. *Id.* *4 (discussing, among other cases, *Kamyab v. Bondi*, No. C-25-389RSL, 2025 WL 2917522 (W.D. Wash. Oct. 14, 2025), and *Phan v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2369-AJB-BLM, 2025 WL 3141205 (S.D. Cal. Nov. 10, 2025)). There, as here, with "'little more than generalizations regarding the likelihood that removal will occur,'" Respondents "have not met their burden to 'respond with evidence sufficient to rebut' Petitioner's showing." *Id.*

To be more specific, as the government does not dispute, Mr. Taifour's receipt of "withholding of removal 'substantially increases the difficulty of removing him.'" *Marquez-Amaya v. Thompson*, No. 5:25-cv-1501-JKP, 2025 WL 3654327, *6 (W.D. Tex. Dec. 15, 2025) (quoting *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025)).

Mr. Taifour's individual circumstances strongly confirm he will not be among the handful of people granted withholding of removal the U.S. removes to a third country. He is a Syrian citizen who was born in Syria. ECF No. 1, Exhibit A ¶ 6. He has no connections to any other country. *Id.*

Further, "[e]ven when ICE has 'identified a third country,' noncitizens like

Petitioner 'would be entitled to seek fear-based relief from removal to that country, which would require additional, lengthy proceedings." *Marquez-Amaya*, 2025 WL 3654327 at *6 (quoting *Munoz-Saucedo*, 789 F. Supp. 3d at 399)); *see Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture."); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (holding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process").

Like in *Munoz-Saucedo*, here, "Petitioner has alleged that he cannot be removed to his country of origin, that removing similarly situated individuals has been historically rare, that ICE tried and failed to find a third country willing to accept him during the initial 90-day detention period, and that there is presently no country in the world willing to accept him." 789 F. Sup. 3d at 399. Like in *Munoz-Saucedo*, then, Mr. Taifour's showing has "more than suffice[d] to demonstrate that Petitioner's removal is not reasonably foreseeable." *Id.*

Finally, contrary to the government's suggestions, *Zadvydas* itself made clear that good faith efforts do not themselves show that removal is significantly likely. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of

Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019).

Here, then, even if the headquarters part of ICE had made new "travel document requests" since it last sent an update to local ICE in November 2025, that would be "insufficient" to defeat Mr. Taifour's showing that his removal is not likely. *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). That would be "merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Id.*; *see also Zavvar*, 2025 WL 2592543, at *7 (finding the presumption of reasonableness rebutted before petitioner was detained for a full six months, despite outstanding third-country requests to Australia and Romania, because of "[t]he lack of any sign that Australia or Romania is actively considering accepting [the petitioner]").

This Court should grant Mr. Taifour's petition and order his release.

IV. Claim Two: Respondents have no argument for how ICE's third-country removal process complies with existing Ninth Circuit law regarding the process due to noncitizens in third-country removal proceedings.

This Court should also prohibit ICE from removing Mr. Taifour to a third country without adequate notice and a meaningful opportunity to be heard regarding his statutory and related rights to seek asylum, withholding of removal, and Convention Against Torture relief as to that third country.

The government identifies certain components of the third-country removal policy challenged in his habeas petition. Compare ECF No. 5 at 8 with ECF No. 1 at 3–4, 9–12, Exhibit B. But the government does not explain how this policy complies with due process or Ninth Circuit law.

As Mr. Taifour explained in his habeas petition, "This policy contravenes Ninth Circuit law." *Nguyen*, __ F. Supp. 3d __, 2025 WL 2419288 at *19. "It

would be impossible to comply both with Ninth Circuit precedent and the policy." *Id.* "'Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will deported violates both INS regulations and the constitutional right to due process.'" *Id.* at *18 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Yet that is exactly what existing ICE policy allows for. ECF No. 1 at 3–4, 9–12, Exhibit B. The government has no response on this point.

Nor does the government's argument regarding the Supreme Court's unreasoned stay order in Dep't of Homeland Sec. v. D.V.D., 145 S. Ct. 2153 (2025), persuade. "The Supreme Court did not decide D.V.D. on the merits, nor did it even necessarily rule on the class's likelihood of success on its due process and APA claims." Nguyen, 2025 WL 2419288 at *22. Because the Supreme Court did not issue a decision explaining its stay, courts "cannot ascertain from the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims." Id. at *23. This distinction matters because "one of the government's primary arguments—that the D.V.D. court had no power to enter classwide injunctive relief—would have no bearing on the merits of individual habeas petition." Id. Further, "absent 'clear guidance from the Supreme Court' that" existing law on third-country removals is "'no longer good law,' this Court must follow 'well-established precedent.'" Id. (internal citations omitted); accord, e.g., Louangmilith v. Noem, No. 25-cv-2502-JES, 2025 WL 2881578, *4 (S.D. Cal. Oct. 9, 2025).

In fact, "[t]o dismiss Petitioner's claims for preliminary injunctive relief at this time would effectively preclude [her] from the relief [s]he seeks entirely and potentially foreclose any relief that [s]he could be entitled to as part of the D.V.D. class if [s]he is removed before the class-wide claims are resolved." Sagastizado v. Noem, __ F. Supp. 3d __, 2025 WL 2957002, *8 (S.D. Tex. Oct. 2, 2025).

V. The remaining TRO factors decidedly favor Mr. Taifour.

This Court need not evaluate the other TRO factors—the Court may simply grant the petition outright. But if the Court does decide to evaluate irreparable harm and balance of harms/public interest, Mr. Taifour should prevail.

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[2] the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690. Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the government likely cannot remove Mr. Taifour in the reasonably foreseeable future. Even if it could, it is equally "well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*,

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[2] The government cites three cases to support the position that illegal immigration detention is not irreparable harm. ECF No. 5 at 9–10. All involved immigrants who were actively appealing to the BIA, but wanted a federal court to intervene before the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1 (W.D. Wash. Feb. 19, 2021); *Cortez v. Nielsen*, No. , 2019 WL 1508458 (N.D. Cal. Apr. 5, 2019); *Resendiz v. Holder*, 2012 WL 5451162. These courts indicated only that post-bond-hearing detention pending an ordinary BIA appeal, in which administrative exhaustion was available to the petitioner and being pursued, was not irreparable harm. *Id.* The government also cites one case for this proposition in which the court *did* grant a temporary restraining order ordering an immigration judge to reconsider a request for a bond hearing. *See Lopez Reyes v. Bonnar*, No. 18-cv-07429, 2018 WL 7474861, *10–11 (N.D. Cal. Dec. 24, 2018).

2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the public's interest to allow the [government] to violate the requirements of federal law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436. *See, e.g.*, *Sun*, 2025 WL 2800037 at *4 (explaining this and holding that the "third and fourth *Winter* factors support injunctive relief" enjoining the petitioner's improper revocation of immigration supervision); *Delkash*, 2025 WL 2683988 at *6 (enjoining the government from re-detaining or removing an Iranian national to a third country without notice and an opportunity to be heard).

VI. Conclusion

This Court should order Mr. Taifour's immediate release. It should also order the Respondents to provide the process identified in the habeas petition before removing Mr. Taifour to an unidentified third country.

Respectfully submitted,

Dated: February 4, 2026

s/ Jessie Agatstein

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