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INTRODUCTION

Petitioner Tayfun Caliskan is detained under 8 U.S.C. § 1231(a)(6) following a final order of removal entered on May 15, 2025, after both parties waived appeal. Petitioner was granted withholding of removal from Turkey. The statutory 90-day removal period expired on August 13, 2025, and the six-month presumptively reasonable detention period recognized in *Zadvydas v. Davis* expired on November 15, 2025. Removal to Turkey is legally barred, and no third country has agreed to accept Petitioner. Continued detention, therefore, violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment.

STANDARD FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY

INJUNCTION

To obtain preliminary injunctive relief under Federal Rule of Civil Procedure 65, Petitioner has the burden of establishing that:

(1) there is a substantial likelihood that she will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury [to him] outweighs the threatened harm to [Respondents]; and (4) the granting of the preliminary injunction will not disserve the public interest.

Speaks v. Kruse, 445 F.3d 396, 399-400 (5th Cir. 2006).

STATEMENT OF FACTS

Petitioner is a native and citizen of Turkiye. *See* Petition for Writ of Habeas Corpus (“Pet’n”) ¶ 24. Petitioner entered the United States near Tecate, California, on or about May 8, 2024, without being admitted or paroled. *See id.* ¶ 25. Upon information and belief, Petitioner was briefly detained and then released from detention by DHS, although Petitioner does not recall under what authority he was released. *See id.* ¶ 26. On May 9, 2024, Petitioner was

released by DHS and served with a Notice to Appear (“NTA”), which designated him as “an alien present in the United States who has not been admitted or paroled” and charged her with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” *See id.* ¶ 27. Following Petitioner’s release, he timely filed a Form I-589, Application for Asylum, with the immigration court in August 2024. Removal proceedings were conducted before the Dallas Immigration Court. *See id.* ¶ 28.

On May 15, 2025, the Immigration Judge granted Petitioner withholding of removal under INA § 241(b)(3). *See id.* ¶ 29. The Immigration Judge ordered Petitioner removed to any country but Turkey. *See id.* ¶ 30. Both parties waived appeal at the hearing. *See id.* ¶ 31. The removal order, therefore, became administratively final on May 15, 2025. *See id.* ¶ 32. Petitioner was detained by ICE on May 15, 2025, and has remained in custody continuously since that date. *See id.* ¶ 33. The statutory 90-day removal period under 8 U.S.C. § 1231(a)(1) has expired on August 13, 2025. *See id.* ¶ 34. The six-month *Zadvydas* presumptive period expired on November 15, 2025. *See id.* ¶ 35. Removal to Turkey is legally barred due to the grant of withholding of removal. *See id.* ¶ 36. Upon information and belief, no third country has agreed to accept Petitioner. *See id.* ¶ 37. Immigration and Customs Enforcement (“ICE”) has not provided evidence demonstrating a significant likelihood of removal in the reasonably foreseeable future. *See id.* ¶ 38. Petitioner has no criminal history. Petitioner has substantial community ties, including family members in the U.S. *See id.* ¶ 39. Petitioner is now detained at the Otero County Processing Center. *See id.* ¶ 40.

ARGUMENTS

I. THE PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

This case is governed by 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner’s removal order became final on May 15, 2025. The 90-day removal period expired August 13, 2025. The six-month presumptive period expired November 15, 2025. More than nine months have now elapsed since finality.

Withholding of removal legally prohibits removal to Turkey. No third country has agreed to accept Petitioner, and Respondents have not produced evidence establishing a significant likelihood of removal in the reasonably foreseeable future. Under *Zadvydas*, once removal is not reasonably foreseeable, continued detention is not authorized.

II. PETITIONER IS SUFFERING IRREPARABLE HARM UNLESS THE COURT ISSUES A TEMPORARY RESTRAINING ORDER

Loss of physical liberty constitutes irreparable harm as a matter of law. Petitioner has been detained well beyond the statutory limits. Each additional day of unlawful detention constitutes ongoing constitutional injury. Irreparable harm to Petitioner is clearly demonstrated. As the court in *Marcelo* held, “[t]he loss of liberty resulting from continued custody after denial of a bond hearing constitutes irreparable harm.” *Marcelo*, 2025 LX 466469, *28; *see also Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (recognizing “a loss of liberty” is “perhaps the best example of irreparable harm”). Here, irreparable harm is already occurring as Petitioner is being forced to present his asylum claim for relief before the immigration court behind detention walls. But for the Respondents’ unconstitutional actions, Petitioner would not have been deprived of an opportunity to be released from detention and litigate her matter from outside of detention. Particularly troubling is the almost criminal like nature of detained immigration proceedings. *See, e.g.*, Maureen A. Sweeney, Sirine Shebaya & Dree K. Collopy, *Detention as Deterrent: Denying Justice to Immigrants and Asylum Seekers*, 36 *Geo. Immigr.*

L.J. 291, 299 (2021) (“Detention also exacts a toll on due process. It is difficult for detained immigrants to get legal representation and assist in preparing and presenting their own cases, making it substantially harder for them to win meritorious claims to relief from deportation.”); Ingrid V. Eagly & Steven Shafer, *Detained Immigration Courts*, 110 Va. L. Rev. 691 (2024).

The Government is constitutionally obligated to provide due process. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Therefore, it is necessary to grant injunctive relief now to prevent these unconstitutional harm from occurring. *See A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (granting TRO to prevent expedited deportation potentially violative of due process). As another court has succinctly put it, “[t]his is not a circumstance, put differently, where the harms Petitioners face are so remote—or are simply monetary—as to fail in establishing they face irreparable harm in the Court's TRO analysis.” *D.B.U. v. Trump*, 779 F. Supp. 3d 1264, 1283 (D. Colo. 2025).

III. THE BALANCE OF HARMS WEIGHS IN FAVOR OF PETITIONER

The merged "balancing-the-equities" and "public interest" factors favor Petitioner. The potential harm to Petitioner if injunctive relief is not granted is serious. Petitioner faces continued unconstitutional confinement. The Government's interest is minimal where removal is speculative and supervision is available under 8 U.S.C. § 1231(a)(3). Indeed, “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Practically speaking, injunctive relief would inflict little more on Respondents than ensure they adhere to the requirements of the Constitution.

IV. THE PUBLIC INTEREST SUPPORTS RELIEF

There is a strong public interest in ensuring that government agencies comply with statutory limits and Supreme Court precedent. Enforcing *Zadvydas* promotes constitutional governance and the rule of law.

V. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION

Because removal is not significantly likely in the reasonably foreseeable future, the appropriate remedy is immediate release under reasonable conditions of supervision.

Alternatively, the Court should order a prompt custody determination at which the Government bears the burden of proving by clear and convincing evidence that continued detention is lawful and necessary.

A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Although the "comfortable majority position—both historically and in recent weeks—is to instead require a bond hearing before an IJ," several courts "have determined that the appropriate relief for an immigration detainee held in violation of due process is the petitioner's immediate release from custody." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at *34 (W.D. Tex. Sep. 21, 2025) (citing *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 LX 353995, at *44 (D. Or. Aug. 21, 2025); see also *Zumba*, 2025 LX 482036 at *32 (holding that "habeas does not provide meaningful relief with respect to some of the indignities petitioner has endured But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention. The Court finds that release

from detention is the appropriate relief”); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) (“[g]iven that the government does not assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release.”).

Alternatively, if the Court is not inclined to order release, the Court should direct DHS to provide Petitioner with a bond hearing before an IJ, at which DHS shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk. This is appropriate as the court in *Lopez-Arevelo* concisely summarized:

When ordering a bond hearing as a habeas remedy, some courts place the burden of proof on the noncitizen seeking release. *See, e.g., Martinez v. Hott*, 527 F. Supp. 3d 824, 838 (E.D. Va. 2021). This practice tracks the agency's own burden allocation at routine bond hearings. *See id.* (citing 8 C.F.R. § 236.1(c)(8)); 8 C.F.R. § 1003.19(h)(3). Yet, as of 2020, the "vast majority"—an "overwhelming consensus"—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted). Allocating the burden in this manner reflects the concern that “[b]ecause the alien's potential loss of liberty is so severe . . . he should not have to share the risk of error equally.” *German Santos*, 965 F.3d at 214 (citing *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018)).

And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence.

Lopez-Arevelo v. Ripa, No. EP-25-CV-337-KC, 2025 LX 467042, at *35 (W.D. Tex. Sep. 21, 2025).

In addition, the Court should also enjoin Respondents from transferring Petitioner out of the district. *See Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 349750, at *5 (W.D. Tex. Sep. 9, 2025) (“[t]he Court finds persuasive the decisions enjoining removal and transfer of petitioners under the Court's inherent power to preserve its ability to hear the case” and that

enjoining transfers was necessary “[t]o ensure the ability to meaningfully assess [Petitioner’s] Petition.”).

CONCLUSION

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted on the 16th day of February 2026.

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