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UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

Nadar Nadari, Alien [redacted]

Petitioner,
v.

PAMELA BONDI, in her official capacity as Attorney General,

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY,

ERNESTO SANTACRUZ, JR., in his official capacity as Acting ICE Field Office Director,
Respondents.

Case No. 2:25-cv-07893

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

**HEARING REQUESTED**

## I. INTRODUCTION

On August 2,1 2025, Nadar Nadari (Petitioner), filed a petition for a writ of habeas corpus challenging the unlawful revocation of his release on an order of supervision (OSUP) and his continued detention without belief that his removal from the United States is reasonably foreseeable.

## II. NOTICE TO RESPONDENTS

Undersigned counsel Sabrina Damast contacted the U.S. Attorney's Office for the Central District of California to meet and confer regarding this Motion on August 22, 2025. On the same date, Daniel Beck at the U.S. Attorney's Office for the Central District of California, responded to counsel's email indicated that he had forwarded Petitioner's request to the agency and would inform counsel if they agreed to the terms of the TRO request. *See* Exhibit F (email from Daniel Beck).

## III. FACTUAL BACKGROUND

Petitioner entered the United States on or about June 30, 1994. Petitioner is married to a U.S. citizen, Sheri Nadari, and he has one U.S.-citizen adult child and one U.S.-citizen adult stepchild.

On or about March 3, 1998, he was convicted of a misdemeanor violation of Penal Code section 243(e)(1) (domestic battery). On or about May 13, 1999, he was conviction of a violation of Health and Safety Code section 11350(a) (possession of a controlled substance), for which he received a deferred entry of judgment. On or about June 29, 2000, he was convicted of violating Vehicle Code sections 23152(a) (driving under the influence) and 20002(a) (hit and run). On or about September 28, 2000, he was convicted of two felony counts of violating of Penal Code section 273.5 (a), for which he was sentenced to 36 months of probation and 210 days of county jail. On or about October 13, 2004, he was convicted of violating Health & Safety Code section 11550(a) (under the influence of a controlled substance).

On or about November 8, 1999, Mr. Nadari was ordered deported from the United States. On information and belief, in approximately 2002, Mr. Nadari was detained by ICE. On information and belief, he remained in ICE custody for approximately 18 months, and he was only released after filing a habeas corpus petition.

On June 6, 2003, Mr. Nadari was released from ICE custody on an Order of Supervision (OSUP). He has reported on an approximate annual basis since that time. Petitioner was again detained by Immigration and Customs Enforcement (ICE) on or about August 19, 2025, in Santa Ana, California. On information and belief, he continues to be detained by ICE in Los Angeles, California.

At the time of Mr. Nadari's re-detention, ICE Officer Hernandez informed his attorney, Rocio La Rosa, that pursuant to ICE policy, people subject to final removal orders would be deported to third countries when removal could not be effectuated to their home county. *See* Exhibit B (submitted with habeas petition). When Attorney La Rosa inquired to what country ICE would be deporting Mr. Nadari, Officer Hernandez indicated that the officer assigned to his case at a detention facility would make that determination. *Id.* Attorney La Rosa also inquired where Mr. Nadari would be detained, and Officer Hernandez said it could be in Adelanto, San Diego, or another state, and that it could take 10 days to place him at a detention center. *Id.*

On information and belief, prior to his detention, Petitioner was given no notice of ICE's intention to re-detain him, and he was not provided with any information about why his OSUP was presumably revoked.

On August 21, 2025, when Petitioner's wife visited him, ICE officers provided Mrs. Nadari with a copy of a certificate of service for a Notice of Revocation of Release and a Warning to Alien Ordered Removed or Deported. *See* Exhibit C (submitted with habeas petition).

However, Petitioner's removal is not imminent. The United States does not have any diplomatic relations with Iran. *See* U.S. Virtual Embassy Iran, "History of U.S.-Iran Policy," *available at* https://ir.usembassy.gov/policy-history/#Diplomatic (accessed on Aug. 21, 2025) (submitted with habeas petition). On information and belief, DHS has no particularized evidence that Petitioner can be removed to any country. On information and belief, Petitioner has not received an individualized hearing before a neutral decisionmaker to assess whether his recent re-detention is warranted due to danger or flight risk.

## IV. ARGUMENT

A temporary restraining order is governed by a four-factor test. Courts must consider whether Petitioner has shown: (1) a likelihood of success on the merits, (2) that he is likely to suffer irreparable harm in the absence of such relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); s*ee also Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014). If Petitioner can demonstrate serious questions going to the merits of his claim – a lesser showing than a likelihood of success on the merits – and the balance of hardship tips sharply in his favor, an injunction may be issued, assuming the other two Winter factors have been met. *Friends of the Wild Swan*, 767 F.3d at 942.

A temporary restraining order preserves the *status quo ante litem*, which refers to the "last uncontested status which preceded the pending controversy."

*Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th Cir. 2024); *Shilling v. United States*, No. 25-CV-241-BHS, 2025 WL 926866, at *11 (W.D. Wash. Mar. 27, 2025) (granting preliminary injunction).

Here, Petitioner meets both the irreparable harm and likelihood of success prongs, and the requested relief is not overly burdensome on Respondents. Accordingly, Petitioner merits issuance of a TRO.

**A. Petitioner Has Shown He is Likely to Succeed on the Merits of his Claim.**

Petitioner's ongoing detention violates his Fifth Amendment right to due process, the Immigration and Nationality Act, and 8 U.S.C. § 1231(a)(6) and its implementing regulations. Petitioner is likely to succeed on the merits of his Petition as the United States has no diplomatic ties with Iran (his country of citizenship), and his continued detention beyond six months is unconstitutional. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

8 U.S.C. § 1231(a) governs the detention of individuals who have been ordered removed. The statute directs ICE to detain such individuals for 90 days while carrying out a removal order. *See* 8 U.S.C. § 1231(a)(2). This 90-day removal period begins when the removal order becomes final. Absent an applicable exception, if ICE cannot remove a person within the 90-day removal period, they are released from custody subject to supervision. 8 U.S.C. § 1231(a)(3).

The regulations permit release of a non-citizen subject to a removal order after the 90-day removal period has elapsed if ICE determines that the non-citizen "would not pose a danger to the public or a risk of flight, without regard to the likelihood of the [non-citizen's] removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(b)(1). These released individuals are typically subject to an OSUP, as Petitioner was prior to being re-detained. *See* 8 C.F.R. § 241.4(j); 8 C.F.R. § 241.13(h).

ICE may withdraw its approval for the release of a non-citizen if it can effectuate the individual's removal from the United States "in the reasonably foreseeable future" or if the individual fails to comply with the conditions of release. 8 C.F.R. § 241.13(h)(4). ICE may only revoke a non-citizen's release if "there is a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future." *Id.* at § 241.13(i)(2). "Upon revocation, the [non-citizen] will be notified of the reasons for revocation of his [] release." *Id.* at § 241.13(i)(3).

While 8 U.S.C. § 1231(a)(6) permits detention beyond the normal 90-day removal period, even these exceptions do not authorize indefinite detention. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (limiting ICE's detention authority to a period "reasonably necessary" to carry out removal and deeming detention impermissible when removal is not "reasonably foreseeable"). This is so because a "statute permitting indefinite detention of an alien would raise a serious constitutional problem" because the "Fifth Amendment's Due Process Clause forbids the government to 'depriv[e]' any 'person….of….liberty without due process of law.'" *Id.* at 690. Whether a noncitizen's detention is within, or beyond, a period reasonably necessary to secure removal" determines whether the detention is statutorily lawful. *Id.* at 699.

The Supreme Court directs that the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. "It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 699-700 (internal citation omitted). "And if removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period." *Id.* at 700 (internal citation omitted).

Accordingly, even if the removal is reasonably foreseeable following the expiration of the removal period, the habeas court may order the noncitizen's release under OSUP pending the removal. And if the noncitizen provides good reason to believe that "there is no significant likelihood of removal in the foreseeable future, the Government must provide evidence sufficient to rebut that showing." *Id.* at 701.

In this case, there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. Petitioner was ordered removed to Iran, a country with which the United States has no diplomatic ties, and thus, no repatriation process. Indeed, Respondents released Petitioner on an OSUP more than 20 years ago precisely because they had no ability to effectuate his deportation to Iran. Since Petitioner has now been detained beyond the 180-day post-removal period, the government must respond with evidence sufficient to rebut Petitioner's showing, and sufficient evidence to establish that Petitioner's removal is reasonably foreseeable. It cannot do so, as evidenced by the statements of ICE Officer Hernandez, who informed Attorney Rocio La Rosa at the time of Mr. Nadari's re-detention that no determination had been yet as to what country ICE would seek to deport Petitioner. *See* Exhibit B (Declaration of Rocio La Rosa, Esq.) (filed with habeas petition).

Respondents may remove a non-citizen to a third country (i.e., a country in which the non-citizen does not hold citizenship) if removal to their country of citizenship is impractical, inadvisable or impossible. *See* 8 U.S.C. § 1231(b)(2)(E)(ii). However, DHS is barred from removing a non-citizen to a country where the non-citizen's life or freedom would be threatened because of five protected grounds. *Id*. at § 1231(b)(3)(A). In addition, DHS is barred from deporting a non-citizen to a country where they face a threat of torture. *See* 8 C.F.R. §§ 208.16-208.18.

Notwithstanding the statutory and regulatory prohibitions on removing non-citizens to countries where they face potential persecution or torture, on March 30, 2025, Respondent Noem issued a memo entitled, "Guidance Regarding Third Country Removals." Exhibit E (filed with the habeas petition). This memo states that if the United States has received "diplomatic assurances" from a third country that non-citizens removed to that country will not be persecuted or tortured, DHS may remove that non-citizen "without the need for further procedures." *Id.*

The procedure laid out in this memo violates the statutory and regulatory provisions requiring Respondents to provide a non-citizen with a forum to demonstrate an individualized risk of torture or persecution in a specific country. The memo purports to rely on blanket assurances from third countries that noncitizens generally will not be tortured or persecuted to circumvent the obligation to determine if an individual non-citizen faces a risk of torture or persecution.

Thus, to the extent that Respondents are detaining Petitioner with the intent to remove him to a third country without notice or the opportunity to demonstrate that he is at a particularized risk of torture or persecution in that third country, the detention is unlawful.

Petitioner should be ordered released on OSUP. He was previously on OSUP for 22 years. Although he incurred one non-violent misdemeanor since his release, that occurred more than 20 years ago, and Respondents did not see fit to revoke his OSUP at the time of the offense, or for two decades thereafter. Accordingly, Respondents revoked Petitioner's OSUP in violation of the notice procedures at 8 C.F.R. § 241.13(i)(3), without any showing that his removal is reasonably foreseeable.

**B. Petitioner will Suffer Irreparable Harm Absent Issuance of a Temporary Restraining Order.**

In the absence of a TRO, Petitioner is a risk of transfer outside of this judicial district and continued unlawful detention, was well as removal to an undesignated third country without notice and an opportunity to be heard. Each of these events would cause Petitioner irreparable harm.

Petitioner's allegations of constitutional violations - namely his Due Process right not to be subject to indefinite detention - permits a *per se* finding of irreparable harm. The "deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017), (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Any transfer of Petitioner outside of this judicial district before the Court adjudicates his habeas petition will interfere with Petitioner's access to counsel, who is located in Los Angeles, California.

Finally, any removal of Petitioner to a third country without notice will likewise cause Petitioner irreparable harm as he will be unable to be heard on any fear-based claim he may have with respect to that country. When the government is unable to remove a noncitizen to the country identified in the order of removal, the government may still remove the individual to any "country whose government will accept the alien into that country." 8 U.S.C. § 1231(b)(2)(E)(vii) ("third country removals"). However, a specific carve-out in the statute prohibits removal to countries where the noncitizen would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A). Similarly, Congress codified protections established by the Convention Against Torture such that a noncitizen may not be removed to any country where he would be tortured. *See* 28 C.F.R. § 200.1; 8 C.F.R. § 1208.16-18, 1208.16-18. "In other words, third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings." *D.V.D.*, 2025 WL 1453640, at *3 (D. Mass. May 21, 2025).

If Petitioner is removed unlawfully and without notice, he may never be returned. *See Trump v. J.G.G.*, 604 U.S. ----, 145 S.Ct. 1003, 1101 (2025) (Sotomayor, J., dissenting) (noting government's position that "even when it makes a mistake, it cannot retrieve individuals from the Salvadoran prisons to which it has sent them"); *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, at *2 (4th Cir. Apr. 17, 2025) ("both the United States and the El Salvadoran governments disclaim any authority and/or responsibility to return" unlawfully removed noncitizen); *Arguelles v. U.S. Att'y Gen.*, 661 F. App'x 694, 716 (11th Cir. Nov. 23, 2016) ("[I]n *Nken*[ *v. Holder*, 55 U.S. 418 (2009)], the Supreme Court told us removal from the United States [after entry of a removal order] is not categorically irreparable because removed petitioners 'who prevail [in a petition for review] can be afforded effective relief by facilitation of their return.' 556 U.S. 418, 435. But . . . it is implicit in this rule that removal *does* constitute irreparable harm when facilitation of a removed petitioner's return will *not* be possible." (emphasis in original)); *D.V.D.*, 2025 WL 1453640, at *23 (D. Mass. May 21, 2025) ("The irreparable harm factor likewise weighs in Plaintiffs' favor. Here, the threatened harm is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable."). Until the Petition is finally adjudicated, Petitioner's transfer or removal to a third country without notice should be restrained.[1]

**C. The Balance of Equities Tip in Petitioner's Favor and the Public Interest Favors Issuance of a Temporary Restraining Order.**

The balance of equities and public interest merge in cases against the government. *See Nken v. Holder,* 556 U.S. 418, 436 (2009). Here, the balance favors Petitioner.

Petitioner does not contest Respondents' ability to prosecute criminal offenses, detain noncitizens, and remove noncitizens under the immigration laws. Here, the likelihood of Petitioner's success on the merits, combined with the established constitutional framework that requires the government to proceed lawfully when effectuating removal, strongly tips the balance of equities in Petitioner's favor. "There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in

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[1] Justice Kavanaugh's concurrence in *J.G.G.* made clear that federal courts, reviewing habeas petitions, have the authority to block the transfer of a detainee. *See J.G.G.*, 145 S.Ct. at 1007 (J.Kavanaugh, concurring) (recognizing that "all nine Members of the Court agree that judicial review is available" of a detainee's challenge to his transfer by federal immigration authorities). "I add only that the use of habeas for transfer claims is not novel." *Id.* "That general rule holds true for claims under the Alien Enemies Act, the statute under which the Government is seeking to remove these detainees. And going back to the English Habeas Corpus Act of 1679, if not earlier, habeas corpus has been the proper vehicle for detainees to bring claims seeking to bar their transfers." *Id.* (internal citation omitted).

having governmental agencies abide by the federal laws that govern their existence and operations." *See League of Women Voters of United States v. Newby,* 838 F.3d 1, 12 (D.C. Cir. 2016) (internal quotation marks and citations omitted).

Petitioner's constitutional right to be free of unlawful detention weighs heavily in the public interest. And the public has a critical interest in preventing wrongful removals, "particularly to countries where they are likely to face substantial harm." *Nken,* 556 U.S. at 436. As Petitioner's continued detention without imminent removal cannot be lawful, there can be no public interest in prolonging that circumstance. *See e.g.*, *Washington v. DeVos*, 481 F.Supp.3d 1184, 1197 (W.D. Wash. 2020).

Respondents cannot show here how the government's interests overcome the irreparable injury to Petitioner. As noted above, the hardship for Petitioner is concrete and severe. He has lived in the United States for more than 30 years, he is married to a U.S. citizen, he has an adult U.S.-citizen child and stepchild and four grandchildren. *See* Exhibits G, H. Prior to his detention, he was gainfully employed by Nationwide Legal, where he had worked for more than 10 years. *See* Exhibits G, I. These equities weigh sharply in favor of granting the requested TRO.

## V. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY

The Court should not require a bond under Fed. R. Civ. P. Rule 65(c). This rule permits a court to grant preliminary injunctive relief "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FRCP 65(c). But it is well established that Rule 65(c) does not impose a mandatory requirement for a bond, but rather "invests the district court 'with discretion as to the amount of security required, *if any*.'" *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). In particular, "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Johnson v. Courturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Here, there is no realistic likelihood of harm to Respondents if the Court grants the requested TRO, and it would pose a significant hardship on Petitioner who is incarcerated to have a bond imposed. The Court should exercise its discretion and waive the requirement to post a bond under Rule 65(c).

## VI. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that he has met the criteria for a temporary restraining order. He asks the Court to enjoin Respondents from transferring him out of this judicial district – or, if he has been transferred, to order his return to the district - and from removing him to a third country without proper notice and opportunity to be heard during the pendency of his habeas proceedings.

**RESPECTFULLY SUBMITTED this 25th day of August, 2025**

**/s/ Sabrina Damast**
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## TABLE OF EXHIBITS

**Exhibit A:** Order of Supervision Documents (previously filed with habeas)
**Exhibit B:** Declaration of Rocio La Rosa, Esq. (previously filed with habeas)
**Exhibit C:** Proof of Service, Notice of Revocation of Release and Warning to Alien Ordered Removed or Deported (previously filed with habeas)
**Exhibit D:** ICE Detainee Locator (Aug. 21, 2025) (previously filed with habeas)
**Exhibit E:** "Guidance Regarding Third Country Removals," (March 30, 2025) (previously filed with habeas)
**Exhibit F:** Email from Daniel Beck, U.S. Attorney's Office
**Exhibit G:** Declaration of Sheri Nadari
**Exhibit H:** Proof of Family Ties

- Marriage Certificate of Nadar Nadari and Sheri Ann Navarro
- Birth Certificate of [redacted] Lopes (Mr. Nadari's stepdaughter)
- Birth Certificate of [redacted] (Mr. Nadari's

grandchild)

- Birth Certificate of [redacted] (Mr. Nadari's grandchild)
- Birth Certificate of [redacted] (Mr. Nadari's grandchild)
- Birth Certificate of [redacted] (Mr. Nadari's grandchild)

**Exhibit I:** Mr. Nadari's Paystubs from Nationwide Legal