

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

MOHAMED NADER ALSHEREF,

Petitioner-Plaintiff,

v.

KRISTI NOEM, *et al.*,

Respondents-Defendants.

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Case No. 3:25-cv-2569

MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Petitioner-Plaintiff Mohamed Nader Alsheref, through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order (“TRO”) to prevent his imminent and unlawful removal from the United States and a Preliminary Injunction (“PI”) ordering his immediate release from unconstitutional and indefinite detention. This motion is based on the accompanying Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, the supporting exhibits, this memorandum of points and authorities, and all applicable law.

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INTRODUCTION

This case presents a stark challenge to the rule of law and the constitutional limits on the government's power to detain and remove individuals. Mr. Alsheref, a stateless Palestinian man who has lived in the United States for decades, is a husband to a U.S. citizen, a father to three U.S. citizen children, and a local business owner. For seventeen years, from 2008 until 2025, he lived freely under an Order of Supervision ("OSUP") because the government correctly determined, under the Supreme Court's mandate in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that there was no significant likelihood of his removal in the reasonably foreseeable future. He complied with every condition of that supervision without fail.

Suddenly, and without any change in the circumstances that have long made his removal a legal and practical impossibility, Respondents-Defendants re-arrested Mr. Alsheref on July 26, 2025. They offered no reason, no notice, and no opportunity to respond, in flagrant violation of their own regulations and the Due Process Clause. Now, Respondents-Defendants are poised to carry out an equally unlawful act: removing Mr. Alsheref to Israel, a country of which he is not a citizen and where he is likely to face persecution on account of his Palestinian identity.

Mr. Alsheref requests two forms of immediate relief. First, he seeks a Temporary Restraining Order to prevent the government from removing him to Israel without respecting his statutory right to seek protection from removal to a country where he has a credible fear of persecution. Second, he seeks a Preliminary Injunction ordering his release from custody. His detention is unconstitutional under *Zadvydas*

because there is no significant likelihood of his lawful removal in the reasonably foreseeable future. Furthermore, the revocation of his long standing OSUP was procedurally and substantively invalid, violating the Administrative Procedure Act (“APA”), the *Accardi* doctrine, and his due process rights.

Without this Court’s immediate intervention, Mr. Alsheref faces the irreparable harm of being unlawfully removed from his family and country, and of being subjected to continued unconstitutional confinement. An injunction will cause minimal, if any, harm to the government, as it would merely require Respondents-Defendants to comply with the Constitution and their own governing statutes and regulations.

FACTUAL BACKGROUND

Mr. Alsheref is a 44-year-old stateless Palestinian man who has resided in the United States since 1998, when he entered lawfully on a student visa. Pet. ¶ 9. He is married to a U.S. citizen, has three U.S. citizen children, and owns a successful auto repair shop in Dallas, Texas. *Id.* ¶ 1.

Following a 2006 conviction for a non-violent drug offense, Mr. Alsheref was ordered removed to Libya on April 2, 2008. *Id.* After detaining him for approximately 90 days, Immigration and Customs Enforcement (“ICE”) determined that it could not secure travel documents from Libya or any other country. *Id.* ¶ 1, 17. Recognizing that his removal was not significantly likely in the reasonably foreseeable future, ICE released Mr. Alsheref on OSUP in or around July 2008, in compliance with the Supreme Court’s holding in *Zadvydas*. *Id.* ¶ 1.

For the next seventeen years, Mr. Alsheref scrupulously complied with every term of his supervision, never missing a check-in. *Id.* ¶ 21. On July 26, 2025, while on a family drive, he was abruptly arrested by ICE agents. *Id.* ¶ 22. When Mr. Alsheref arrived at the ICE facility and asked why he was being detained, an ICE agent candidly admitted ignorance, stating, “I don’t know what to do with you. I see here no Egypt, no Jordan,” referencing past failed removal attempts. *Id.* ¶ 23. The agent disclaimed any new basis for removal, shrugging and positing that ICE might “try” sending him to “some country in Africa.” *Id.* At no point was Mr. Alsheref notified of any “changed circumstances” that would justify his re-detention or afforded an opportunity to respond, as required by federal regulations. *Id.* ¶ 24.

On or about August 22, 2025, Respondents-Defendants initiated a new plan to remove Mr. Alsheref to Israel. *Id.* ¶ 3. Mr. Alsheref is not a citizen of Israel, has no ties to Israel, and has no legal basis to enter or reside there. The likelihood of Israel issuing a travel document for a stateless Palestinian is effectively zero. Upon information and belief, this action is part of a new, unlawful government policy of deporting Palestinian to Israel, where they are then taken by the Israeli military and abandoned at the West Bank border without any formal transfer of custody to the Palestinian Authority. *Id.* ¶¶ 34-36. Such a removal, should it take place, would be an extra-legal circumvention of the Immigration and Nationality Act’s (“INA”) mandatory removal framework.

LEGAL STANDARD

A party seeking a temporary restraining order or preliminary injunction must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tip in their favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 US. 7, 20 (2008). “The first two factors are the most critical.” *Valentine v. Collier*, 956 F.3d 797, 801 (5th Cir. 2020). When the government is the opposing party, the final two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Mr. Alsheref is Likely to Succeed on the Merits.

Mr. Alsheref is likely to prevail on each of his claims. Respondents-Defendants’ plan to remove him to Israel is a clear violation of his statutory right to seek protection from persecution, justifying a TRO. Simultaneously, his underlying detention is both unconstitutional under *Zadvydas* and procedurally invalid under the APA, justifying a PI ordering his release.

A. A TRO is Warranted Because an Attempted Removal to Israel Would Violate Mr. Alsheref’s Statutory Right to Seek Withholding of Removal.

Respondents-Defendants’ plan to remove Mr. Alsheref to Israel violates on the most fundamental protections in U.S. immigration law: the absolute prohibition on removing an individual to a country where they would face persecution or torture. This attempted removal is unlawful both because it denies Mr. Alsheref the required procedural opportunity to seek protection and because his substantive claim for that protection is overwhelmingly strong.

1. The Removal Violates Mr. Alsheref's Right to Be Screened for a Fear of "Return" to Israel.

The INA contains a mandatory, non-discretionary command that the government “may not remove a [non-citizen] to a country if the Attorney General decides that the [non-citizen’s] life or freedom would be threatened in that country” on account of their nationality, race, religion, political opinion, or membership in a particular social group. 8 U.S.C. § 1231(b)(3)(A).

The right to his protection is necessarily country-specific. An individual must be given a meaningful opportunity to express a fear of persecution or torture with respect to the particular country to which the government seeks to remove them. *See Majd v. Gonzalez*, 446 F.3d 590, 595 (5th Cir. 2006) (“Unlike asylum, withholding of removal is not discretionary. . . . To be eligible for withholding of removal, a [non-citizen] must demonstrate an objective clear probability of persecution in the proposed country of removal”) (internal quotation omitted). Here, Mr. Alsheref’s 2008 removal order designated Libya as the country of removal. He has never been afforded a proceeding—let alone a reasonable fear interview—to assess his fear of being removal to *Israel*.

By attempting to remove Mr. Alsheref to Israel without first providing him a formal opportunity to apply for statutory withholding and protection under the Convention Against Torture as to Israel, Respondents-Defendants are circumventing the INA’s most critical procedural safeguard. This violation alone establishes a likelihood of success on the merits and warrants immediate injunctive relief to prevent an unlawful and irrevocable act.

2. Mr. Alsheref is Highly Likely to Succeed on the Merits of a Withholding of Removal Claim.

A TRO is further warranted because Mr. Alsheref's fear of removal to Israel is not speculative; it is exceptionally well-founded and supported by a mountain of evidence, including the U.S. government's own findings. To obtain withholding, Mr. Alsheref must demonstrate a "clear probability" that his life or freedom would be threatened, which the Supreme Court has defined as a "more likely than not" standard. *INS v. Stevic*, 467 U.S. 407, 429-30 (1984). As a stateless Palestinian man, he can readily mean this burden.

The risk Mr. Alsheref faces is not merely from random acts of violence, but from the systematic and institutionalized persecution of Palestinians by Israeli authorities. Credible, extensive documentation from sources including the U.S. Department of State, Amnesty International, and the United Nations demonstrates a clear pattern of persecution. These reports document arbitrary killings, the use of administrative detention without charge or trial against thousands of Palestinians, and credible allegations of torture and other cruel, inhumane, or degrading treatment in detention facilities.¹

¹ See, e.g., U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Israel, West Bank and Gaza*, <https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/israel-west-bank-and-gaza>; Amnesty International, *Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity* (Feb. 1, 2022), <https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination-and-a-crime-against-humanity/>.

Given this overwhelming evidence and his lack of status in Israel, it is “more likely than not” that Mr. Alsheref, if removed to the custody of Israeli authorities, would be detained and that his life or freedom would be threatened on account of his Palestinian nationality. Because his removal would violate the plain text of § 1231(b)(3)(A), he is highly likely to succeed on the merits of this claim, and this Court should enjoin Respondents-Defendants from taking this unlawful action.

B. A Preliminary Injunction is Warranted Because Mr. Alsheref’s Detention is Unconstitutional and Procedurally Deficient.

1. Mr. Alsheref’s Detention is Indefinite and Unconstitutional Under *Zadvydas*.

Mr. Alsheref is likely to succeed on the merits of his claim that his continued detention violates the Fifth Amendment Due Process Clause.

The “Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 690. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.*

Detention for non-criminal purposes is only allowed “in narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotations and citations omitted). With respect to immigration detention, the Supreme Court has recognized two special justifications: preventing flight risk and preventing danger to the community. *See id.* “[B]y definition, the first justification—

preventing flight—is weak or nonexistent where removal seems a remote possibility at best.” *Id.*

The Supreme Court has held that the Immigration and Nationality Act (“INA”) “limits a[non-citizen’s] post-removal detention period to a period reasonably necessary to bring about that [non-citizen’s] removal from the United States. It does not permit indefinite detention.” *Id.* at 689; *see id.* at 699 (“Whether a set of circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority.”).

“A [non-citizen] may be held in confinement *until* it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701 (emphasis added). “[I]f removal is not reasonably foreseeable, the [habeas] court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699. This rule applies to both once-lawful permanent residents and inadmissible non-citizens. *See Clark v. Martinez*, 543 U.S. 371, 378 (2005).

Mr. Alsheref presents the quintessential case for release under *Zadvydas*. In 2008, Respondents-Defendants themselves concluded that his removal was not reasonably foreseeable and released him. For seventeen years, that reality has not changed. Respondents-Defendants have presented no evidence of any changed circumstances that make his removal to an authorized country suddenly likely. To the contrary, the ICE agent who processed his re-detention admitted there was no plan and no change in circumstances. Pet. ¶ 23. Because there is no significant

likelihood of his lawful removal in the reasonably foreseeable future, Mr. Alsheref's detention is unconstitutional, and he must be released.

2. The Revocation of Mr. Alsheref's Order of Supervision Violates the Administrative Procedure Act, *Accardi* Doctrine, and Fifth Amendment.

Mr. Alsheref is also likely to succeed on the merits of his claim that the revocation of his order of supervision and subsequent de-detention violate the Administrative Procedure Act ("APA"), the *Accardi* Doctrine, and his Fifth Amendment Procedural Due Process rights.

The APA empowers courts to "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law[.]" 5 U.S.C. § 706(2)(A)-(C).

Furthermore, administrative agencies must abide by their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The INA requires that orders of supervision are issued pursuant to "regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). The regulation relevant to supervised released on the basis that there is no significant likelihood of removal in the reasonably foreseeable future is found at 8 C.F.R. § 241.13.

Release pursuant to an order of supervision on this basis may be revoked for two reasons: (a) the non-citizen has violated a condition of release, 8 C.F.R. § 241.13(h)(4)(i)(1), or (b) ICE determines that "on account of changed circumstances, .

. . . there is a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future.” *Id.* § 241.13(h)(4)(i)(2). When ICE revokes an order of supervision, it must notify the non-citizen “of the reasons for revocation” and “promptly . . . afford the [non-citizen] an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.13(h)(4)(i)(3).

“These regulations clearly indicate, upon revocation of supervised release, it is the [government’s] burden to show a significant likelihood that the [non-citizen] may be removed.” Order Overruling Objections and Adopting Report and Recommendation at 6, *Escalante v. Noem, et al.*, No. 9:25-cv-00182 (E.D. Tex., Aug. 2, 2025) (ECF No. 43).

Respondents-Defendants violated these regulations in every respect. Mr. Alsheref never violated the conditions of his supervision and Respondents-Defendants have not—and cannot—identify any changed circumstances that make his removal significantly likely now when it was not 17 years ago. Mr. Alsheref remains stateless. Nor did Respondents-Defendants provide Mr. Alsheref with notice, reasons, or an opportunity to be heard, as their own regulations mandate.

Substantively, the revocation was baseless. Procedurally, it was improper. This blatant disregard for binding regulations renders the revocation of Mr. Alsheref’s OSUP and his subsequent re-detention unlawful under the APA, the *Accardi* doctrine, and the Due Process Clause.

II. Mr. Alsheref Will Suffer Immediate and Irreparable Harm.

The violation of an individual's constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). “The loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Opulent Life Church v. City of Holly Spring, Miss*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod*, 427 U.S. at 373); *see also* Charles Alan Wright & Arthur R. Miller, *11A Federal Practice and Procedure* § 2948.1 (3d ed. 1998) (“When an alleged deprivation of a constitutional right is involved, . . . most courts hold that no further showing of irreparable injury is necessary.”).

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *see also Velasco Lopez v. Decker*, 928 F.3d 842, 850 (2d Cir. 2020) (“[t]he deprivation [] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. They use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone.”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in “concrete terms the irreparable harm imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic

burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained”).

Without a TRO, Mr. Alsheref faces the irreparable harm of unlawful removal to a country where he has no legal status and faces an uncertain and dangerous fate. He would be forcibly separated from his wife, children, and community. Once removed, his ability to litigate the lawfulness of his removal would be severely prejudiced, if not extinguished.

Without a PI, Mr. Alsheref will continue to suffer the irreparable harm of unconstitutional detention. Every day he remains incarcerated is a day he is deprived of his fundamental right to liberty. His detention separates him from his family, prevents him from running his business, and subjects him to the physical and psychological impacts of incarceration. This harm can only be remedied by his immediate release.

III. The Balance of Equities Weigh Heavily in Mr. Alsheref’s Favor and a Preliminary Injunction Is in the Public Interest.

The third and fourth factors tip strongly in Mr. Alsheref’s favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

When assessing whether a preliminary injunction is warranted, the Court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24

(internal quotation omitted). “[I]njuncts protecting [constitutional] freedoms are always in the public interest.” *Opulent Life Church*, 697 F.3d at 298 (quoting *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)); see also *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (“[W]e have held that plaintiffs who are able to establish a likelihood that [a] policy violates the U.S. Constitution . . . have also established that both the public interest and the balance of equities favor a preliminary injunction.”) (cleaned up).

The injury to Mr. Alsheref—the loss of his liberty and potential unlawful removal to a country where he faces extreme danger—is profound. In contrast, the harm to Defendants-Respondents is minimal to non-existent. An injunction would merely require the government to comply with the Constitution and the INA. The government has no legitimate interest in violating either. Releasing Mr. Alsheref, a man who has demonstrated his reliability for 17 years on supervision, poses no cognizable risk of flight or danger to the community.

Furthermore, “injuncts protecting [constitutional] freedoms are always in the public interest.” *Opulent Life Church*, 697 F.3d at 298. The public has a profound interest in ensuring that its government acts within the confines of law, that the writ of habeas corpus remains a meaningful check on executive detention, and that individuals are not indefinitely detained or unlawfully removed in violation of their statutory and constitutional rights.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Alsheref's motion for a temporary restraining order preventing his removal to Israel without compliance with the INA's withholding framework and his motion for a preliminary injunction ordering his immediate release out of Respondents-Defendants' unlawful custody and into the care of his U.S. citizen wife and children.

Dated: September 22, 2025

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**Pro Hac Vice forthcoming*

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(b)(3), the undersigned affirms that it was not possible for counsel for Petitioner-Plaintiff to arrange a conference with counsel for the Respondents-Defendants before filing this motion, because no attorney has noticed an appearance on this matter yet for Respondents-Defendants. Counsel for Petitioner-Plaintiff will arrange a conference as quickly as practicable as soon as the U.S. Attorney's Office notices appearances in this case.

/s/ Felix Galvez

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Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2025, counsel for Petitioner-Plaintiff provided a copy of this Motion for a Preliminary Injunction by email to the following individuals:

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