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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

YURI DECYATNIK, Petitioner, v. KRISTI NOEM, et al. Respondents.	No. 2:25-cv-10027-AH-PD **RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** Hon. Anne Hwang United States District Judge

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Pursuant to the Court's order [Dkt. no. 6], the Respondents respond to Petitioner's Motion for Temporary Restraining Order (the "Motion") and respectfully request that the Court deny the Motion.

Petitioner claims that under the *Zadvydas* standard "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that "he is stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Petitioner is not entitled to relief under *Zadvydas* because his detention is not indefinite; he is scheduled to depart the United States via charter flight to Ukraine on November 3, 2025. Declaration of Jorge Suarez ("Suarez Decl.") ¶ 27. He is also not being removed to a third country. Petitioner was born in Ukraine and Ukraine has agreed to repatriate him. *Id.* ¶¶ 3, 26.

Respondents respectfully request that the Court deny the Motion.

II. FACTUAL BACKGROUND

Petitioner was born in the former Union of Soviet Socialist Republics, in what is present-day Ukraine. Suarez Decl. ¶ 3. On September 29, 1990, Petitioner was admitted to the United States as a refugee. *Id.* ¶ 4. On June 10, 1992, Petitioner adjusted his refugee status to a lawful permanent resident. *Id.* ¶ 5.

On May 11, 2001, Petitioner was convicted of domestic violence felony violation of a court order under RCW §§ 26.50.110(1), (4) in the Superior Court of Washington for King County. *Id.* ¶ 6. He was sentenced to six months and prohibited from contacting the victim, his spouse, for five years. *Id.* Petitioner was also convicted of harassment – domestic violence under RCW § 9A.46.020 in the Superior Court of Washington for

King County. *Id.* ¶ 7. He was sentenced to twelve months and ordered to complete state certified domestic violence treatment. *Id.*

On May 25, 2001, Immigration and Naturalization Service ("INS") encountered Petitioner at the King County Jail Adult Detention Facility in Seattle, Washington, where he was incarcerated for his domestic violence offenses. *Id.* ¶ 8. On June 7, 2001, INS issued a warrant for Petitioner's arrest and a Notice to Appear based on his domestic violence convictions, placing him in removal proceedings. *Id.* ¶ 9. On June 18, 2001, INS took Petitioner into custody. *Id.* ¶ 10.

On February 26, 2002, an Immigration Judge denied Petitioner's applications for cancellation of removal for certain permanent residents, cancellation of removal for non-permanent residents, adjustment of status based on marriage to his United States citizen spouse, asylum, withholding of removal, and withholding of removal under the Convention Against Torture. *Id.* ¶ 11. The Immigration Judge ordered the Petitioner removed to Ukraine. *Id.* Petitioner did not appeal this decision, so this order became administratively final on March 28, 2002. *Id.*

On May 1, 2002, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Western District of Washington. *Id.* ¶ 12. On September 10, 2022, the district court granted the petition for writ of habeas corpus. *Id.* ¶ 13. On September 23, 2002, INS released Petitioner and placed him under an Order of Supervision. *Id.* ¶ 14.

On May 27, 2003, Petitioner was convicted of domestic violence felony violation of a court order under RCW §§ 26.50.110(1), (5) in the Superior Court of Washington for King County. *Id.* ¶ 15. Petitioner was sentenced to imprisonment for twelve months and one day and ordered to have no contact with the victim, his spouse. *Id.*

On June 23, 2003, United States Immigration and Customs Enforcement – Office of Enforcement and Removal Operations ("ERO") encountered Petitioner at the Washington State Corrections Center in Shelton, Washington, where he was incarcerated for his domestic violence offense. *Id.* ¶ 16. On August 10, 2003, ERO took Petitioner into custody. *Id.* ¶ 17.

On January 12, 2004, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Western District of Washington. *Id.* ¶ 18. On February 9, 2004, ERO released Petitioner from custody and placed him under an Order of Supervision. *Id.* ¶ 19. On the same date, Petitioner and Respondent filed a stipulation for order of dismissal without prejudice based on Petitioner's release from custody. *Id.* ¶ 20. On February 19, 2004, the district court dismissed the habeas corpus proceeding without prejudice. *Id.* ¶ 21.

Thereafter, Petitioner reported to ERO during scheduled check-ins, spanning from February 2004 until May 2025. *Id.* ¶ 22. On May 16, 2025, Petitioner reported to ERO in Miramar, Florida for his scheduled check-in. *Id.* ¶ 23. On the same date, ERO took Petitioner into custody, where he was transferred to Krome North Service Processing Center. *Id.* ¶ 24. On July 4, 2025, Petitioner was transferred to the Adelanto ICE Processing Center. *Id.* ¶ 25.

ERO's Removal and International Operations (RIO) worked with the Government of Ukraine to effectuate the removal of aliens to Ukraine. *Id.*¶ 6. Upon submission of Petitioner's birth certificate and verification of his identity, the Government of Ukraine has agreed to repatriate Petitioner. *Id.* ¶ 27.

Petitioner is scheduled to depart the United States via ICE Charter to Ukraine on November 3, 2025. *Id.* ¶ 28.

III. LEGAL STANDARD FOR TRO

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal citation omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21–22 (2008). To meet that showing, the moving party must make "a clear showing" 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*, 555 U.S. at 21–22. Where the government is a party, the balance of equities and the public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"A preliminary injunction can take two forms." *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Id.* (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir. 1988)). In contrast, a "mandatory injunction 'orders a responsible party to take action.'" *Id.* at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)). "A mandatory injunction 'goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)). To this end, where "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984); *Comm. of Cent. Am. Refugees v. Immigr. & Naturalization Serv.*, 795 F.2d 1434, 1441 (9th Cir. 1986) (same). For mandatory preliminary relief to be granted, Plaintiffs "must establish that the law and facts *clearly favor* [thei]r position …." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (*en banc*) (emphasis in original); *see also Marlyn Nutraceuticals*, 571 F.3d at 879 ("In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in doubtful cases ….'") (quoting *Anderson*, 612 F.2d at 1115).

Here, the status quo is that Petitioner is detained, and a TRO would disrupt it.

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A TRO or PI is intended to preserve the status quo until the case can be judged on the merits. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

IV. ARGUMENT

A. Petitioner's Removal to Ukraine is Imminent

Likelihood of success on the merits is a threshold issue: "[W]hen 'a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three [elements].'" *Garcia*, 786 F.3d at 740 (*en banc*) (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)).

Here, with a valid final order of removal, ICE may re-detain under 8 U.S.C. § 1231(a)(6), for post-removal-period detention, as well as under 8 U.S.C. §1357 (a), general immigration enforcement authority.

As an initial matter, there is no jurisdiction to contest the government's decision to detain Petitioner pending his removal pursuant to a final removal order. 8 U.S.C. § 1252(g) provides that for "Judicial review of orders of removal":

> 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.

Even if the detention decision were reviewable in District Court, the INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When a noncitizen receives a final removal order, their detention is mandatory for the following 90 days. 8 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6). 8 U.S.C. § 1231(a)(6) provides that an alien ordered removed who is inadmissible under section 1182, removable under 1227(a)(1)(C), (a)(2), or (a)(4), or who has been determined to be a risk to the community or unlikely to comply with the order of removal "may be detained beyond the removal period."

Here, Petitioner does not identify any basis for contesting his removal from the United States. And as discussed above, claims contesting removal in District Court are generally barred by 8 U.S.C. § 1252(g), which permits the government to enforce final removal orders without judicial review except in certain narrowly delimited circumstances not present here. To the extent a non-citizen wishes to contest such final removal orders, they have other legal process available—not a District Court lawsuit.

Petitioner contends that his detention is improper, however, because it is too prolonged, asserting that he previously spent fifteen months in INS/ICE custody from 2001-2002 (Suarez Decl. ¶¶ 10,14), an additional six months in INS/ICE custody from 2003-2004 (Suarez Decl. ¶¶ 17,19), and has been re-detained since May 16, 2025 (Suarez Decl. ¶ 23), placing him over the total six-month presumptive limit of *Zadvydas*.

It is important to emphasize how the Supreme Court ruled in *Zadvydas* and what the exact constitutional standard is:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701. Thus the noncitizen "may be held in confinement until it has been determined that there *is no significant likelihood of removal in the reasonably foreseeable future.*" *Id.* (italic emphasis added).

The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that "he is stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d at 1063.

Here, there is certainly a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. After being released in 2004, he was recently taken into detention—on May 16, 2025. Suarez Decl. ¶¶ 19, 24. ICE ERO worked with the government of Ukraine and agreed to repatriate Petitioner. *Id.* ¶ 26. Petitioner is scheduled to depart the United States via ICE charter to Ukraine in less than two weeks. *Id.* ¶ 27. There is no evident bar against Petitioner's removal to Ukraine, and the government has arranged for his imminent removal. Petitioner is also not in detention for purposes of evaluating whether he can be removed to a country other than Ukraine.

Courts therefore properly deny *Zadvydas* claims under such circumstances and find that a "habeas petitioner's assertion as to the unforeseeability of removal, supported only by the mere passage of time, [is] insufficient to meet the petitioner's burden to demonstrate no significant likelihood of removal under the Supreme Court's holding in *Zadvydas.*" *Muthalib v. Kelly*, 2017 WL 11696616, at *3 (C.D. Cal. Apr. 19, 2017) (collecting cases); *Stepanyuk v. Sessions*, 2018 WL 4929198, at *2 (C.D. Cal. Oc. 10, 2018) (denying habeas TRO where ICE was in the process of obtaining a travel document from Ukraine to repatriate petitioner because his Ukrainian passport expired); *Zhao v. Kelly*, 2017 WL 1591818, at *4 (C.D. Cal. Apr. 27, 2017) (habeas relief not warranted where application for travel documents from Chinese consulate were pending and petitioner had been detained for nine months).

The government acknowledges that Petitioner should be timely removed in the reasonably foreseeable future, consistent with the principles articulated in *Zadvydas*, and it has been taking steps to do so. Issuing a TRO, however, as mandatory injunctive relief to disrupt the status quo on an *ex parte* basis, is not appropriate.

B. Petitioner Fails to Establish He Will Likely Suffer Irreparable Harm Absence the Issuance of a TRO

To satisfy this factor, a noncitizen must demonstrate "a particularized, irreparable harm beyond mere removal." *Nken v. Holder*, 556 U.S. 418, 438 (2009) (Kennedy, J., concurring) (emphasis added). A "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent a preliminary injunction. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Here, Petitioner has not submitted establishing that irreparable injury is likely to occur if he remains in his current state of detention. Petitioner bears a heavy burden to prove the likelihood of future irreparable injury *apart* from his future removal, and the evidence proffered does not satisfy it. *See, e.g., Winter*, 555 U.S. at 22; *see also Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009). Accordingly, Petitioner has not met his heavy burden to show that he will likely suffer irreparable harm unless a TRO is issued.

C. The Balance of Equities and the Public Interest Does Not Support a TRO

The final two factors required for a preliminary injunction or TRO—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See, e.g., Nken, supra*, at 435. Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest tip strongly in favor of the Respondents.

The public interest in enforcement of United States immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant."). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to the Defendants and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Here, Petitioner's requested relief would interfere with Respondents' enforcement of immigration laws without sufficient justification. Congress granted the government authority to detain noncitizens when—like Petitioner—they commit serious crimes. Accordingly, the balance of equities and the public interest tip in favor of Respondents.

V. CONCLUSION

For all the above reasons, the Respondents respectfully request that the Court deny the Motion.

Dated: October 23, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondents, certifies that the memorandum of points and authorities contains 865 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 6, 2025

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