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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Wahid Masud Siddiqi,

Petitioner,

v.

United States of America, *et al.*,

Respondents.

Case No. 2:25-cv-02614-JAD-BNW

Reply in Support of § 2241 Petition[1] and Temporary Restraining Order

[1] Respondents' response to Siddiqi's petition was untimely. This Court ordered Respondents to file the response on February 3, 2025. ECF No. 3. The Answer was not filed on that date and, by its terms, FRCP 6(a) would not extend that time. Based on their failure to file a response, Petitioner filed a notice of Respondents' non-opposition on February 4, 2026. Respondents did not file their response until 5:16 p.m. on February 6, 2025. On that date, Respondents filed a motion for leave to file their response, ECF No. 14, and their response to the petition for writ of habeas corpus and motion for temporary restraining. *See* ECF Nos. 15, 16. While the Court should grant Siddiqi's habeas petition based on Respondents' failure to file a timely response, he prevails on the merits regardless of whether this Court considers the untimely response.

INTRODUCTION

Petitioner Wahid Masud Siddiqi, an Afghani citizen, was ordered removed on February 13, 2006. ECF No. 9-1 at 2–3. He was originally detained after the removal order pursuant to the mandatory 90-day detention provision under the INA but was then released on supervision. Siddiqi was again detained at some point in 2020 (ECF No. 15-2 at 4[2]), but was released on supervision on May 6, 2020, "due to no significant likelihood of removal in the foreseeable future." *Id.* Siddiqi was on an order of supervision (OSUP) up until the time he was re-detained on November 26, 2025. He has remained in ICE custody since that time.

Siddiqi's continuing indefinite detention is unreasonable and violates due process under *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001), because his removal is not reasonably foreseeable. In their Response, Respondents provide information that individuals have been removed to Afghanistan. However, this information is woefully insufficient to establish that Siddiqi's removal is reasonably foreseeable. Further, Respondents' argument that this petition is premature is wrong for the same reason—the constitutional violation has been established because it is now almost twenty years since the removal order became final and removal is not reasonably foreseeable.

Accordingly, the petition should be granted, and this Court should order Siddiqi's immediate release.

ARGUMENT

I. The Court has jurisdiction over Siddiqi's petition.

Respondents devote almost half of their substantive brief to arguing that this

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[2] Respondents filed their response to petition for writ of habeas corpus and motion for temporary restraining order twice. *See* ECF Nos. 15, 16. Because ECF Nos. 15 and 16 are identical documents, Petitioner will only reference ECF No. 15.

Court does not have jurisdiction over Siddiqi's petition pursuant to the INA and the REAL ID Act. *See* ECF No. 15 at 7–11 (citing 8 U.S.C. §§ 1252(b)(9), (g)). Ignoring 8 U.S.C. § 2241, Supreme Court precedent, and the decisions of district courts in this district and throughout the United States, Respondents argue § 1252(g) "bars habeas review in federal district court of claims arising from a decision or action to 'execute' a final order of removal." ECF No. 15 at 7 (citing *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999)). Respondents also incorrectly cite to the Third Circuit's decision in *Tazu v. Att'y Gen United States*, 975 F.3d 292, 297 (ed Cir. 2020). ECF No. 15 at 8–9.

Respondents willfully misinform this Court with respect to its jurisdiction, arguing that "every circuit court of appeals to address the issue has held that § 1252(g) eliminates subject-matter jurisdiction over habeas challenges . . . to an arrest or detention for the purpose of executing a final removal order." ECF No. 15 at 7 (internal citations omitted). As the Court in *Rivero v. Mina*, 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *2 (M.D. FL Jan. 26, 2026) recently found, "[t]his argument beggars belief and appears to deliberately mislead the Court about the law and the record."

Section 1252 applies to the judicial review of orders of removal. Respondents failed to provide the full clause in § 1252(g), which states "[e]xcept as provided in this section *and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241*. . . no court shall have jurisdiction to hear any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." (Emphasis added). Additionally, a full reading of *Tazu* is important. Circuit Judge Bibas opens the opinion by stating, "[i]n law, as in life, the path often matters as much as the destination. For an alien *challenging his removal*, that path begins with a petition for review of his removal order, not a habeas petition." *Tazu*, 975

F.3d at 294. Indeed, as the Court notes in the second paragraph, Tazu filed a habeas petition to stop the execution of his removal order while he attempted to reopen his removal proceedings. *Id.* Neither the statute nor the case cited by Respondents apply because Siddiqi is not challenging his order of removal.

Respondents also incorrectly contend that Siddiqi cannot challenge his detention pursuant to § 1252(b)(9). However, once again, this section is addressing challenges to final orders of removal. Indeed, Respondents again cite to *Tazu*, incorrectly arguing the Third Circuit held that "the same claims concerning a revocation of supervised release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9) because the claims arose from actions taken to execute the petitioner's removal. ECF No. 15 at 10 (citing *Tazu*, 975 F.3d at 299). Here, again, Respondents misstate the Third Circuit's decision. The case does state § 1252(b)(9) "eliminates the District Court's jurisdiction over Tazu's re-detention claim, as it 'arises from' an action taken to execute his removal." *Tazu*, 975 F.3d 299. However, Tazu's case was in a different procedural posture, and Respondents omit the part of the decision that applies to Siddiqi's case.

Indeed, the Third Circuit was clear that § 1252(b)(9) "does not foreclose all claims by an immigration detainee." *Id.* For example, "[i]f Tazu had *challenged the length of his confinement, . . . he could have pursued that challenge* outside a petition for review. *Id.* (citing *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020). Importantly, "[c]hallenges to the length or conditions of an alien's confinement are not directly about removal. 'For those claims, review is now or never.'" *Id* (citing *E.O.H.C.*, 950 F.3d at 180). Therefore, according to Respondent's own precedent, Siddiqi's challenge to the length of his confinement is proper.

In challenging this Court's jurisdiction over Siddiqi's petition, Respondents ignore 28 U.S.C. § 2241 and *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme

Court was clear in *Zadvydas* that § 2241 is the proper forum to challenge post-removal detention. *Id.* at 2498. The Supreme Court explicitly states that while § 1252 states "no court shall have jurisdiction to review" removal decision, when petitioners "do not seek review of the Attorney General's exercise of discretion" but rather "they challenge the extent of the Attorney General's authority under the post-removal-period detention statute," courts have jurisdiction to review decisions through § 2241.

II. Siddiqi's continuing detention violates due process.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Siddiqi has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable. Respondents have violated the Due Process Clause of the Fifth Amendment because Siddiqi's removal is not reasonably foreseeable. *Zadvydas* requires that Siddiqi be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision").

A. Siddiqi's petition is not premature.

Respondents contend that Siddiqi's petition should be dismissed because his present detention since November is below the presumptively reasonable time limit of six months established by the Supreme Court in *Zadvydas*. ECF No. 15 at 12. Respondents are incorrect and their narrow focus on the six-month period misses the forest for the trees. The real question under *Zadvydas* is, and always has been, whether Siddiqi's detention is reasonably necessary to secure removal.

1. The *Zadvydas* six-month period of presumptive reasonableness has long since passed.

The first issue this Court must consider is when the six-month period of presumptive reasonableness runs. The answer is that it starts during the 90-day

removal period after the order of removal becomes final, 8 U.S.C. §1231(a)(1)(B), and comprises that period and the following three months. *See Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001) (the period of presumptive reasonableness is "six months after a final order of removal—that is, three months after the statutory removal period has ended.") Here, Siddiqi's order of removal was entered in February of 2006. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The presumptively reasonable period thus expired six months after the entry of his removal order and three months after the end of his 90-day removal period, almost twenty years ago. Thus, Respondents' argument fails because the window of presumptive reasonableness has long since passed.

The government asks this Court to take a different approach and has proposed calculating the removal period differently where, as here, an immigrant is released and then re-arrested. ECF No. 15 at 12. Pursuant to Respondents' argument, the government would get a new six-month period of detention each time a petitioner is re-arrested. But this proposed alternative calculation contradicts the statute, *Zadvydas*, and decisions of courts in this district, as Respondents admit. *See* ECF No. 15 at 12 ("Even if this court adopts the position taken by other courts in this district . . ."). And other district courts agree that this is not correct. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 721–22 (W.D. Wash. 2025) (collecting cases); *see also Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), report and recommendation adopted, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This proposal would create an obvious end run around *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and quickly rearresting them every six months.

This is incorrect. "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date

the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed and that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal." *Bailey v. Lynch,* No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). None of these statutory starting points have anything to do with whether or when an immigrant is detained. *See id.* Because the statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

The Courts in this circuit disagree with Respondents' argument as well. *See Tanahan v. United States*, Case No. 2:25-cv-02075-RFB-BNW, 2026 WL 161761 (D. Nev. Jan. 21, 2026). On January 21, 2026, Judge Bouleware held Respondents' argument that the six-month period of presumptive reasonableness restarts for every new detention fails for two reasons applicable to this case.[3] *Id.* at *5 n. 3. First, Judge Boulware found "a non-citizen's presumptively reasonable period of detention is tied to their removal order, and it lapses six months after this order becomes final." *Id.* (citing *Kim Ho Ma*, 257 F.3d at 1102 n.5). Second, petitioners "are not subject to a new presumptively reasonable period of detention every time they are re-detained. The INA does not authorize indefinite detention. That principle is the central thrust of the Supreme Court's decision in *Zadvydas*." *Id.* Judge Boulware noted that if an individual was subject to a new presumptively reasonable period of detention every time they were detained, the government could circumvent the INA and *Zadvydas* by releasing and re-detaining "such that they never reach six months of continuous detention. That would amount to indefinite

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[3] Although not applicable to this case, the Court additionally found that the six-month period for Tanahan had passed; therefore, it was not presumptively reasonable to detain Tanahan under the government's own terms.

detention in all but name, which is statutorily and constitutionally impermissible." *Id.* (quoting *Shadalo v. Mattos*, No. 2:25-cv-02076-RFB-BNW, 2025 WL 3568234, at *6 (D. Nev. Dec. 14, 2025) (internal quotation marks omitted)). Here, the presumptively reasonable six months for detaining Siddiqi expired almost two decades ago.

Finally, Respondents attempt to argue that even if this "[C]ourt adopts the position taken by other courts in this district that the 6 months period is cumulative and to hold otherwise would allow ICE to abuse the rules, such an abuse is not present here." ECF No. 15 at 12. Respondents contend that the six-month period restarted because Siddiqi was arrested in September 2025 for an alleged criminal violation. *See* ECF No. 15-2 at 3. Respondents do not cite—and indeed cannot cite—to a court holding that because a petitioner allegedly committed a crime, that this circumstance now gives ICE the right to re-start the six-month presumptively reasonable period. Siddiqi's criminal history does not change the question in this case. There is no exception to the due process right to be free from indefinite immigration detention based upon having a criminal history.

Indeed, each of the petitioners in *Zadvydas* also had a long criminal history. *See Zadvydas*, 533 U.S. at 684–686. But that history was simply not relevant to whether there was a due process violation. The *only* relevant question is whether removal is reasonably foreseeable. *See id.* at 700. In fact, the only time the Supreme Court implied a criminal history could be relevant is when *there is no due process violation*, namely when the Government has established that the deportation is reasonably foreseeable. *See id.* ("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."); *see also Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 400 (D.N.J. 2025) ("nothing supports the argument that danger to the community is a relevant factor

to consider in conducting a *Zadvydas* analysis"). Respondents have not shown reasonable foreseeability here, so prior criminal history is simply not relevant. As Judge Boulware found in *Tanahan*, criminal history "is irrelevant to the Court's inquiry—which focuses squarely on the likelihood of Petitioner's removal in the reasonably foreseeable future." *Tanahan*, Case No. 2:25-cv-02075-RFB-BNW, 2026 WL 161761 at *2 n.1.

2. Even if this Court accepts Respondents' argument that the six-month period has not yet expired, Siddiqi must still be released because he can rebut the presumption of reasonableness.

Even if the six months have not yet expired, Siddiqi should still prevail on his petition because he has shown that his removal is not reasonably foreseeable. Importantly, the *Zadvydas* court did not say the six-month presumption is irrebuttable, and a variety of courts across the country that have considered the issue have found the presumption of reasonableness during the first six months of post-removal order detention can be rebutted. *See Munoz-Saucedo v. Pittman,* No. CV 25-2258 (CPO), 2025 WL 1750346, at *5 (D.N.J. June 24, 2025) (analyzing the issue and collecting case). "Both during the six-month period and after, a district court has an ongoing **obligation to determine whether detention remains authorized**." *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2997585, at *2 (D. Md. Oct. 24, 2025) (internal quotations omitted; emphasis in original). "Within the six-month window," the noncitizen bears the burden of "prov[ing] the unreasonableness of detention." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). After six months, there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and the burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701. "Whether detention is 'reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority…The basic federal

habeas corpus statute grants the federal courts authority to answer that question.'" *Medina v. Noem, et al., Respondents*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

Here, as argued below, Respondents provide essentially no evidence to support the idea that Siddiqi's removal is reasonably foreseeable. Respondents do not provide any type of documentation concerning what steps have been taken in furtherance of removal. Other courts have granted habeas relief in similar cases where ICE cannot provide documentation of their efforts to facilitate removal. *See Nguyen*, 796 F. Supp. 3d at 722; *Douglas*, 2025 WL 2997585, at *4.

B. Siddiqi must be released immediately because his removal is not reasonably foreseeable.

Siddiqi's continued detention is unreasonable and his removal is not reasonably foreseeable. Siddiqi has now been in immigration detention for the original 90 days after the removal order, an unknown amount of time in 2020,[4] and, at the time of this pleading, an additional two months and sixteen days. Siddiqi cannot be removed to Afghanistan. He was originally ordered removed to Afghanistan on February 13, 2006, almost twenty years ago. Despite cooperating with ICE over the past twenty years by filling out travel documents, Respondents have not been able to effectuate his deportation. Upon information and belief, throughout his prolonged detention, he has not been given any indication that preparations have been made to deport him. Indeed, he was informed by an ICE official during this detention that they would not be able to deport him. Further, Respondents assure this Court "there are no intentions, plans or efforts being made for a third party removal of Siddiqi." ECF No. 15 at 14.

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[4] Respondents have not provided the documentation to establish how many days Siddiqi was in detention during 2020.

In their Response, the only evidence Respondents provide to show there is a significant likelihood of Siddiqi's removal in the reasonably foreseeable future are statistics that ICE has removed some individuals to Afghanistan in the past three years. *See* ECF No. 15 at 12. However, while this evidence shows "there is at least some possibility that [Afghanistan] will accept Petitioner at some point. [T]hat is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 796 F. Supp. 3d at 725 (citing *Zadvydas*, 533 U.S. at 701).

Courts in this district and within the circuit have regularly refused to find the Government has established reasonable foreseeability where the Government has offered little more than generalizations regarding the likelihood that removal will occur. See, e.g., *Cavieres Gomez v. Mattos*, No. 2:25-cv-00975-GMN-BNW, 2025 WL 3101994 at *6 (D. Nev. Nov. 6, 2025); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *4 (W.D. Wash. April 25, 2012). In *Cavieres Gomez*, Respondents alleged that removal was reasonably foreseeable because ICE had not "completely" abandoned their efforts to remove Petitioner. 2025 WL 310994 at *6. And in that case, Judge Navarro held that Respondents' "bare assertions that removal *could* possibly occur cannot satisfy their burden under *Zadvydas*." *Id.*

In *Singh*, the court found that ICE had not met its burden when it "merely assert[ed] that it has followed up on its request for travel documents" but could not provide any "substantive indication regarding how or when it expect[ed] to obtain the necessary travel document from the Indian government." 448 F. Supp. 2d at 1220.

In *Hoac*, the court held that the government's assertion that "a change in circumstances exist[ed] because there [was] a pending updated travel document

request and a '2020 treaty memorandum of understanding' that authorizes 'removal and repatriation of Vietnamese citizens,'" as well as the fact that removals to Vietnam had recently occurred was not enough to meet the government's burden. 2025 WL 1993771, at *3. The Court noted the "fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future." *Id.* Further, the court explained that "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around." *Id.*

In *Chun Yat Ma*, 2012 WL 1432229, at *4, the Court found an affidavit from an ICE official that included a statement that an individual's travel documents would "likely" be issued soon to be insufficient. The Court held that because Respondents could not "provide a current affidavit or any sort of reliable evidence that removal is likely [it] weights in favor of finding that Petitioner's removal is unlikely to happen in the reasonably foreseeable future." *Id.*

Respondents have given this Court less evidence than was presented to other courts that was deemed insufficient. Respondents must show more than general numbers—they must provide an individualized analysis. *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *4 (D. Mass. June 20, 2025). In *Nguyen v. Hyde*, the Court found that Respondents had not been provided "clear information" as to whether a travel request was "submitted to Vietnam, whether Vietnam has even acknowledged receipt of the request or otherwise responded to [the] request, or the anticipated wait time for a response from Vietnam." *Id.* Thus, Respondents could not "make the showing that circumstances have changed such that [Petitioner would] be removed to Vietnam in the reasonably foreseeable future pursuant to 8 C.F.R. § 241.13(i)(2)." *Id.*

The same is true here. While Respondents provided evidence that some individuals have been removed to Afghanistan, they have not informed the Court of the circumstances surrounding those removals or even how many requests were made and denied. Nor have Respondents provided the Court with information regarding how long individuals had to wait to obtain travel documents. Respondents have not provided the Court with evidence specifically related to Siddiqi, including whether travel documents have been requested from Afghanistan. And the Court does not know how long Siddiqi would have to wait for travel documents—if Afghanistan even decides to provide them.

At bottom, the question for this Court is whether Siddiqi's removal is reasonably foreseeable. The history of his case, and the dearth of relevant evidence provided by Respondents compels the conclusion that it is not.

C. Siddiqi's re-detention violates ICE's own regulations.

Respondents next contend Siddiqi's re-detention does not violate its own regulations because there are changed circumstances that justify his detention. ECF No. 15 at 13–14. Specifically, Respondents argue that Siddiqi's arrest for an alleged criminal offense and the increase in individuals removed to Afghanistan have changed the circumstances. Petitioner addresses the removal of individuals to Afghanistan above. The fact that the government has removed some individuals does not justify re-detaining Siddiqi because Respondents have not shown his removal is reasonably foreseeable.

With respect to his arrest, while Respondents contend that Siddiqi was re-arrested because he violated the law, this does not alone give ICE the ability to hold Siddiqi in detention. Siddiqi appears to be re-detained for an irrelevant ground of removability (because Siddiqi was already ordered removed in 2006). ICE has not alleged that Siddiqi violated his OSUP terms. Notably, the immigration documents submitted by Respondents do not include a revocation of Siddiqi's OSUP.

Respondents do not explain why or how Siddiqi was in violation of immigration law or why he was detained by ICE, given that he had already been ordered removed and released on an OSUP that does not seem to have been properly revoked.

Further, no matter the reason for re-detention, Siddiqi was entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.* Respondents have neither alleged nor provided evidence that ICE followed its procedure, as it is required to do. ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). This Court may review a re-detention decision for compliance with the regulations. *See Gomez v. Mattos,* No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at *3 (D. Nev. Nov. 6, 2025); *Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144 (D. Mass. 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

The failure to provide Siddiqi with "reasons for revocation" and an "opportunity to respond to the reasons for revocation" violates ICE's own policies. "[B]ecause officials did not properly revoke Siddiqi's release pursuant to the applicable regulations," this Court will likely find that "petitioner is entitled to his release" on an order of supervision. *Liu,* 2025 WL 1696526, at *3.

III. This Court should grant a temporary restraining order to protect against Siddiqi's continued unlawful detention.

For a temporary restraining order (TRO) petitioner "must establish 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 v. Nat. Res. Def Council, Inc.,* 555 U.S. 7, 20 (2008); *accord Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.,* 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve "substantially identical" analysis).

As Siddiqi has shown in his amended petition, ECF No. 8, and this reply, he is likely to succeed on the merits of his habeas petition because his detention has been prolonged and Respondents are unable to show there is a likelihood of his removal in the reasonably foreseeable future.

As to the second *Winter* factor, Respondents claim Siddiqi cannot show irreparable harm because generally asserting harm is insufficient. ECF No. 15 at 14 (citing *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (tuna boat owners did not allege sufficient threat of irreparable economic injury of placing female observers on boat to enforce Marine Mammal Protection Act); *Emanuel v. Morda*, Case No. 2:24-cv-201356-RFB-BNW, ECF No. 15 at 3–4 (allegations that unnamed officers were trying to kill petitioner were not enough to show irreparable harm)). Respondents are correct that Siddiqi must show more that speculative harm; however, he has done just that.

Siddiqi made more than general assertions of harm. Siddiqi has been unlawfully detained for over two months. He has already been harmed by his unconstitutional detention, and each additional day in detention adds to the hardship. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Further, unlawful detention itself "constitutes extreme or very serious damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999

(9th Cir. 2017) (internal citations omitted). Respondents fail to address the Ninth Circuit's holding in *Vasquez Perdomo v. Noem*, finding that "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold no further showing of irreparable injury is necessary. 148 F.4th 656, 689 (9th Cir. 2025).

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Respondents continue to argue that Siddiqi's detention is lawful and not indefinite. Respondents are incorrect and these factors weigh in Siddiqi's favor. Siddiqi has shown that his detention is not valid or lawful.

While the harm of continued detention to Siddiqi is great, the harm to the government is minimal. In fact, Respondents failed to address any harm the government faces from releasing Siddiqi. However, the government does benefit from his release as "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely unconstitutional process." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Furthermore, the public interest benefits from an injunction requiring Respondents to comply with their own mandatory policy.

For these reasons, this Court should grant this motion and issue a temporary restraining order.

CONCLUSION

Siddiqi's continuing detention violates due process. He is entitled to relief on the grounds raised in his petition and his motion for temporary restraining order. He must be released immediately.

Dated February 13, 2026.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Megan Hopper-Rebegea
Megan Hopper-Rebegea
Assistant Federal Public Defender

/s/ Sylvia Irvin
Sylvia Irvin
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on February 13, 2026. I personally served a true and correct copy of the foregoing index and exhibits in support of the first amended petition by CM/ECF to the following individuals:

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I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

Wahid Masud Siddiqi, [redacted] Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060	John Mattos, Warden Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060

/s/ Victoria Lenzi

An Employee of the
Federal Public Defender