

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**



Said Shahmohamadian,
Petitioner,

DHS No. A



v.

Civil Case No. 5:25-cv-03615-FWS-RAO

David Marin, et.al.,
Respondent(s)

Motion for a Preliminary Injunction and a Temporary Restraining Order

Accompanying, with this document, Said Shahmohamadian, Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Because he is almost certain prevail on at least one of his claims, he respectfully asks the Court to I). Issue a temporary restraining order ordering Respondent to: (a) immediate release Petitioner from custody, (b) refrain from removing Petitioner from the United States, (c) restore Petitioner to the *status quo* prior to his detention by reinstating his prior order of supervision; and (d) show cause why Petitioner's application for a preliminary injunction should not be granted; and II). Ultimately grant Petitioners a preliminary injunction.

Legal Standard

The standard for issuing a Temporary Restraining Order (TRO) is the same as the standard for issuing a preliminary injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2, 98 S. Ct. 359, 54 L. Ed. 2D 439 (1977). A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is

entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 172 L. Ed. 2d 249(2008). “The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) ‘that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20). These four factors—the *Winter* factors—apply whenever a preliminary injunction is sought. *Winter*, 555 U.S. at 20; see *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (“a showing on all four prongs” is required).

Likelihood of Success on the Merits

Failure to Comply with Regulations

Title 8 Section 1231 of the United States Code governs the detention and removal of non-citizens subject to final order of removal. Section 1231 states that once “an alien is order removed, the Attorney General shall remove the alien from the United States within period of 90 days”. 8 U. S. C. § 1231(a)(1)(A), “During the [90 day] removal period, the Attorney General shall detain the alien”. *Id.* §1231(a)(2)(A). Once the removal period passes and the “alien does not leave or is not removed... the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General” which include statutorily mandated condition. *Id.* §1231(a)(3). This suggests that, if a noncitizen is not removed, he will be placed under an OSUP upon release.

Relevant here, two regulations discuss the release of noncitizen subject to a removal order: 8 C.F.R. § 241.4 (“Continued detention of inadmissible... aliens beyond the removal period’) and 8 C.F.R. 241.13 (“Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future’), Section 241.4 generally applies to those who are inadmissible under 8 U.S.C. § 1182. See *Id.* §241.4(a)(1), Subsection (i) of that regulation provides for revocation of release by a district director or Executive Associate Commissioner if one of four condition is met: the purpose of release are served, the noncitizen violates a condition of release, it is appropriate to enforce removal

order or commences removal proceedings against a non citizen, or the conduct of a noncitizen or any other circumstances indicates release is no longer appropriate. *Id.* § 241.4(l)(2).

Section 241.13 was added in 2001 (in light of *Zadvydas*) and applies “where the alien has provided good reasons to believe there is no significant likelihood of removal... in the reasonably foreseeable future.” 8 C.F.R § 241.13(a); Continued Detention of Alien Subject to Final Orders of Removal, 66 FR 56967-01. 56968 (Nov. 14, 2001). If there is a determination under section 241.13 that there is no such significant likelihood, section 241.13(b)(1) allows for the release of the noncitizen under an OSUP if he is not danger to public or a risk of flight. If there are changed circumstances such that a significant likelihood of removal materializes, section 241.13 explicitly provides for revocation and sets forth procedures, including an initial informal interview promptly after the return to custody and a revocation custody review § 241.13(i)(2)-(3). Assuming the noncitizen is not released after theses procedures, section 241.4 then governs. *Id.* §241.13(i)(2).

Apparently, Petitioners released from immigration detention was pursuant to 8 C.F.R. § 241.4. and his re-detention was due to a determination that there was a reasonable likelihood of enforcing the removal order (emphasis added). However, the section 241.4 requires that [non-citizen] be provided an initial meaningful opportunity to contest the revocation of his OSUP through an informal interview. As noted above, there are four distinct grounds for the revocation of an OSUP in Section 241.4(l)(2) (including violation of a condition of release) The subsection immediately following, discussing the timing of review, sets forth the following procedure for revocation under all theses grounds: an informal interview as provided for in subsection (l)(1) and then the “normal review process” 8 C.F.R § 241.4(i)(3). That is subsection (3) clarifies that the informal interview applies to all four enumerated grounds for revocation. Section 241.13(i)—a regulation codifying the rule that a person whose release is revoked to enforce a removal order must receives an initial informal interview and other process—by saying that the revocation is due to it being appropriate to enforce a removal order”. In short Petitioner is entitled to the process set forth in section 241.13(i) when he was re-detained.

Manifestly, here the Respondents have not provided Petitioner with an initial interview or an opportunity to respond to the purported reasons for revocation. Despite having multiple opportunities to address this issue. (government agencies are required to follow their own regulations). *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954). (holding that Petitioner is likely to succeed on his claim that his re-detainment was unlawful). See *Wing Nuen Liu v. Carter*, No. 25-CV-03036-JWL, 2025 U.S. Dist. LEXIS 115275, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "and most obviously . . . petitioner was not granted the required interview upon the revocation of his release"); *Sering Ceesay v. Kurzdorfer*, No. 25-CV-00267-LJV, 2025 U.S. Dist. LEXIS 84258, 2025 WL 1284720, at *21 (W.D. N.Y. May 2, 2025) (finding petitioner was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon his re-detainment)

Irreparable Harm

In the absence of preliminary relief Petitioner is at risk of removal to a third country without due process right to meaningful notice and opportunity to be heard. "it is beyond dispute that he would face irreparable harm from removal to a third country".

A.A.R.P. v. Trump, 145 S. Ct. at 1364, 1367, 221 L. Ed. 2D 765, (2025). (An injunction "should issue only where the intervention of a court of equity is essential in order effectually to protect . . . rights against injuries otherwise irremediable.") *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S. Ct. 1798, 72 L. Ed. 2D 91 (1982) (quoting *Cavanaugh v. Looney*, 248 U.S. 453, 456, 39 S. Ct. 142, 63 L. Ed. 354 (1919)). Petitioner seeks a temporary order enjoining the government from transferring or removing him during the pendency of this action, he implicitly recognizes that the irremediable injury here is removal to a third country without notice. (seeking "the same notice requirement" as that ordered in *D.V.D.*) *Department of Homeland Security v. D.V.D.*,—U.S.—, 145 S. Ct. 2153, 222 L. Ed. 2d 370 (2025) (Mem.) —U.S. —, —S. Ct. —, 2025 WL 1832186 (July 3, 2025). ("Here, the "irremediable" injury would be deportation without meaningful opportunity to present a claim based on fear of persecution, torture, or death.") In cases implicating

removal, “there is a public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm.” *Nken v. Holder*, 556 U.S. 418, 436, 129 S. Ct. 1749, 173 L. Ed. 2D 550 (2009). Though there is a countervailing “public interest in prompt execution of removal orders,” *id.*, it is well-established that “our system does not permit agencies to act unlawfully even in pursuit of desirable ends,” *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 766, 141 S. Ct. 2485, 210 L. Ed. 2d 856 (2021) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582, 72 S. Ct. 863, 96 L. Ed. 1153, 62 *Ohio Law Abs.* 417 (1952)).

Further, 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, 96 S. Ct. 2673, 49 L. Ed. 2D 547 (1976)). Where, as here, the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting *Wright, Miller, & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted that “unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.” *Hernandez*, 872 F.3d at 999.

Balance of the Equities and Public Interest

When the government is a party, as it is here, “the balance of equities and public interest factors merge.” *Pimentel-Estrada v. Bar*, 464 F. Supp. 3D 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The risk of harm to Petitioner far outweighs the government’s interest in illegally detaining him, for it is “always in the public interest to prevent the violation of a party’s constitutional rights.” 695 F.3d at 1002. (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” (quotation omitted)); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”). As other courts in this district and others have concluded under similar circumstances, “the potential harm to [Petitioner] is significant, while the potential harm to the government is

minimal.” *Pablo Sequen*, 2025 U.S. Dist. LEXIS 148751, 2025 WL 2203419, at *3. Here, the government faces a short delay in detaining Petitioner can establish demonstrates, by clear and convincing evidence, that her detention is necessary to prevent danger to the community or flight. See *Jorge M. F.*, 2021 U.S. Dist. LEXIS 40823, 2021 WL 783561, at *3; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 U.S. Dist. LEXIS 113566, 2025 WL 1676854 (N.D. Cal. June 14, 2025). The government is not “harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983). “Faced with . . . a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor.” *Singh v. Andrews*, No. 25-CV-00801, 2025 U.S. Dist. LEXIS 132500, 2025 WL 1918679, at *9 (E.D. Cal. July 11, 2025) (quoting *Hernandez*, 872 F.3d at 996) (cleaned up).

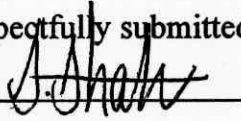
Status Quo

Petitioner request the court to release him from detention “to preserve the status quo before [Respondents] unlawful actions[.]” The status quo ante litem is “the last uncontested status which preceded the pending controversy[.]” *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir, 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)); see *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014) (“the ‘status quo’ refers to the legally relevant relationship between the parties before the controversy arose.”) (citing *McCormack v. Hiedeman*, 694 F.3d 1004, 1020 (9th Cir. 2012)). *Domingo-Ros v. Archambeault*, No. 25-cv-01208-DMS-DEB, 2025 U.S. Dist. LEXIS 95253, 2025 WL 1425558, at * (S.D. Cal. May 18, 2025) (granting an injunction for petitioners that sought a “probationary injunction” to “preserve the status quo preceding this litigation-their physical presence in the United States free from detention”); *Abrego Garcia v. Noem*, No. 25-cv-00951-PX, 2025 U.S. Dist. LEXIS 65298, 2025 WL 1014261, at *9 (D. Md. Apr. 6, 2025) (finding that the petitioner “request[ed] relief designed to re[s]tore the status quo ante . . . to return him to where he was on March, 2025, before he was apprehended by ICE and spirited away to [the Terrorism Confinement Center in El Salvador]”); *Pinchi v. Noem*, No. 25-CV-05632-RMI-RFL, 2025 U.S. Dist. LEXIS 127539, 2025 WL 1853763, at *3 (N.D. Cal. Jul. 4, 2025) (finding that the “moment prior to the

Petitioner's likely illegal detention" is the status quo). Accordingly, Petitioner request this Court to immediate release him and return him to the status quo.

Respectfully submitted,

/s/



Date 19th, December 2025

Said Shahmohamadian,

Petitioner *Pro Se*

