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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

BOLAS, RAMEZ

Petitioner,

V.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAM BONDI, United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; Kelei Walker, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents

[redacted]

Case File No.:

Immigration file No.: [redacted]

PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

EMERGENCY MOTION

Petitioner seeks a preliminary injunction that requires Respondents to release him within 24 hours because he has been detained more than one-hundred and ninety (190) days since being ordered removed but granted Withholding of Removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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ARGUMENT

To obtain a preliminary injunction, Petitioner must demonstrate that (1) they are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Petitioner raises only "serious questions going to the merits," the Court can nevertheless grant relief if the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Id.*

I. Petitioner satisfies all the factors required for a preliminary injunction.

A. Petitioner is likely to succeed on the merits of their argument that ICE and EOIR are violating his Due Process.

Under 28 U.S.C. § 2241, federal courts have jurisdiction to review the legality of immigration detention. The Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that post-removal-order detention under 8 U.S.C. § 1231(a)(6) is limited to a period reasonably necessary to effectuate removal. The Court established a presumptively reasonable period of six months; beyond that, continued detention is permissible only if removal is significantly likely in the reasonably foreseeable future.

This holding was expanded in *Clark v. Martinez*, 543 U.S. 371 (2005) to inadmissible aliens, confirming the six-month presumption applies universally.

Likewise, Tenth Circuit recognized and implemented this framework in

Soberanes v. Comfort, 388 F.3d 1305 (10th Cir. 2004), requiring proof of removal likelihood.

Here, Petitioner has been detained for more than six months following a final order of removal. ICE has not demonstrated that removal is significantly likely in the reasonably foreseeable future. Petitioner's continued detention violates the Fifth Amendment Due Process Clause where prolonged detention without adequate justification infringes liberty interests. INA: § 1231(a)(6) does not authorize indefinite detention.

Once detention exceeds six months, the burden shifts to the government to rebut the presumption of unreasonableness by showing removal is likely soon. *Zadvydas*, 533 U.S. at 701.

B. Petitioner will suffer irreparable harm absent an injunction.

Parties seeking preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Id.*

Detention constitutes a loss of liberty that is irreparable.

Petitioner's detention constitutes such a harm, as "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of

physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For this reason, the Supreme Court has repeatedly made clear that prolonged deprivations of liberty—like those that noncitizens regularly experience—require a timely hearing to test the legality of detention before a "neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); see also *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55–56 (1991) (similar); *Gonzalez v. United States Immigr. & Customs Enft*, 975 F.3d 788, 823–26 (9th Cir. 2020) (holding that Gerstein applies to the detention of noncitizens on a detainer); *Zadvydas*, 533 U.S. at 690 (detention requires a hearing before an independent decisionmaker to assess whether the detention "bear[s] [a] reasonable relation" to a valid government purpose, such as preventing flight or protecting the community against dangerous individuals (alterations in original) (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding Bail Reform Act's pre-trial civil detention scheme precisely because it required the government to justify detention in a "full-blown adversary hearing" before a "neutral decisionmaker"—a federal judge).

Petitioner's claims raise constitutional concerns, for civil detention "violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted). These constitutional concerns reflect irreparable harm, with strong likelihood of success

on his claim that he is being held under § 1226.

Detention has also taken an emotional and mental toll on Petitioner, who reports significant emotional trauma and physical struggles. Such emotional stress, depression and reduced sense of well-being further support a finding of irreparable harm.

C. The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Hise, Petitioner face weighty hardships: loss of liberty, separation from family, significant stress and anxiety, and difficulty in obtaining an attorney.

The government, by contrast, faces minimal hardship: the administrative costs associated with bond hearings. "[T]he balance of hardships tips decidedly in Petitioner's favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Accordingly, the balance of hardships and the public interest overwhelmingly favor injunctive relief to ensure that Respondents comply with federal law and afford Petitioner release on bond.

II. Prudential exhaustion is not required.

There are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious, or irreparable injury will result.

In addition, a court may waive an exhaustion requirement when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action." *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731, 739–41 (2001). "Such prejudice may result . . . from an unreasonable or indefinite timeframe for administrative action." *Id.* at 147 (citing cases). Hise, the exceptions regarding irreparable injury and agency delay apply and warrant waiving any prudential exhaustion requirement.

As with the irreparable harm analysis, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant his motion for a preliminary injunction and:

1. Issue an order as to Petitioner, requiring that Respondents release Mr. Bolas

within twenty-four hours.

Respectfully submitted,

/s/ Stacey King

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CERTIFICATION FOR EMERGENCY MOTION

(1) Petitioner is unlawfully detained, and every day his irreparable harm is compounded, where no remedy of law can make him whole;

(2)

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(3) and Petitioner, through counsel, has attempted to meet-and confer with Respondents, who remain unreachable and who have made it abundantly clear that they will not consider voluntarily releasing any

detained immigrants who entered without inspection. Petitioner has been unable to resolve the matter without court action.

/s/ Stacey King

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