District Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RACHAD TAHA, Petitioner, v. DREW BOSTOCK, *et al.,* Respondents.	Case No. 2:25-cv-00649-RSM FEDERAL RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner Rachad Taha brings a habeas corpus petition seeking release from U.S. Immigration and Customs Enforcement (ICE) custody. He alleges that because ICE does not currently have a travel document to remove him to his native country, and because he has filed an application for Temporary Protected Status (TPS) with U.S. Citizenship and Immigration Services (USCIS), ICE cannot remove him in the reasonably foreseeable future, and therefore his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). In fact, Taha's detention is not unlawfully prolonged, and his TPS application does not prevent his detention.

In addition to his habeas petition, Taha also seeks emergency relief by way of a temporary

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restraining order (TRO) mandating his immediate release.[1] However, he alleges no risk of imminent, irreparable harm that is not shared by all immigration detainees seeking habeas review. Because Taha's detention presents no extraordinary emergency and is lawful, Federal Respondents request the Court deny Taha's TRO motion and his habeas petition.

II. FACTUAL BACKGROUND

Taha is a native and citizen of Lebanon. Declaration of Deportation Officer Robert Andron (Andron Decl.) ¶ 4. He entered the United States without inspection and was apprehended by Border Patrol near Eagle Pass, Texas, on or about July 16, 2023. *Id.* He was processed for expedited removal and transferred to ICE custody at the South Texas ICE Processing Center. *Id.* Within days, USCIS conducted a credible fear interview and determined Taha did not establish a credible fear of removal to Lebanon. *Id.* ¶ 5. In early August, an Immigration Judge reviewed USCIS's determination and agreed. *Id.* ¶ 6. Taha requested reconsideration, which was denied. *Id.* ¶ 7. He was transferred to Karnes County Residential Center in Texas on August 23, 2023. *Id.* ¶ 8.

ICE requested a travel document in September 2023. Andron Decl. ¶ 9. After receiving no response from the Lebanese consulate, ICE resubmitted the request in January 2024. *Id.* Shortly thereafter, ICE released Taha on an Order of Supervision with instructions to enroll in alternatives to detention (ATD) via SmartLINK on his personal device and to report in person to ICE starting on February 27, 2024. *Id.* ¶ 10.

By March 2024, Taha began missing ICE check-ins. That month, he missed a biometrics check-in and did not respond to phone calls or messages from ICE. Andron Decl. ¶ 12. In

[1] Federal Respondents do not read Taha's pleadings to request an order to prevent his removal to Lebanon. To the extent he argues for such an order, it would be barred under 8 U.S.C. § 1252(g), which removes from federal courts' jurisdiction "any cause or claim by or on behalf of any alien arising from the decision or action … to … execute removal orders against any alien under this chapter."

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December, he missed two more biometrics check-ins and completed them only after ICE contacted him. *Id.* ¶¶ 13–14. In January, he missed another check-in. *Id.* ¶ 15. After missing these check-ins, ICE arrested Taha in Portland, Oregon, on January 26, 2025, and he was transferred to the Northwest ICE Processing Center in Tacoma. *Id.* ¶ 16.

Taha alleges he applied for TPS and employment authorization in January 2025. Dkt. 1 ¶ 63; Dkt. 4 ¶ 24. Based on his allegations, his TPS application may be incomplete because he did not attend a biometrics appointment with USCIS he alleges he should have attended. Dkt. 4 ¶ 24. As such, he does not allege that USCIS has determined he is prima facie eligible for TPS or that he has received an employment authorization document as a result of his TPS application. *See id.*

ICE issued Taha a Notice of Revocation of Release no later than March 28, 2025. *See* Andron Decl. ¶ 17; Dkt. 3-10. When ICE served this notice, Taha expressed that his parents who live in Lebanon would not assist in efforts to get a passport for him. Andron Decl. ¶ 18. Later, however, Taha assisted ICE in completing a travel document request, and ICE has since submitted the request to the Lebanese consulate. *Id.* ¶ 19. ICE also has Taha's Lebanese identification card, so it expects the Lebanese government will be able to confirm his identify and issue a travel document. *See id.*

In recent months, the United States has been working with partner nations to secure agreements allowing for repatriation of their citizens who have been ordered removed from the United States. Andron Decl. ¶ 20. This has allowed ICE to remove people to countries with whom ICE previously encountered obstacles relating to removal, including Lebanon. *Id.* Indeed, Lebanon has been cooperating with the U.S. government in accepting its nationals who have been ordered removed, and ICE believes there is a significant likelihood that Taha will be removed in the reasonably foreseeable future. *Id.* ¶¶ 21–22.

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III. LEGAL STANDARD

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, 22 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (the TRO standard is "substantially identical" to preliminary injunction standard). A petitioner must establish: (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." *Winter*, 555 U.S. at 20. Alternatively, a petitioner who shows only that there are "serious questions going to the merits" may satisfy the *Winter* requirements by establishing that the "balance of hardships [] tips sharply towards [the petitioner]," and that the remaining two *Winter* factors are met. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

Preliminary relief is meant to preserve the status quo pending final judgment, rather than obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). When preliminary relief would change the status quo and "order a responsible party to take action," it is "particularly disfavored." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009). Indeed, "[i]n general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted).

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Here, Taha seeks mandatory injunctive relief in the form of an order requiring his immediate release. He must show the law and facts clearly favor his position.

IV. ARGUMENT

Though couched as three distinct claims, at bottom Taha's petition raises a *Zadvydas* claim challenging his detention.[2] *See* Dkt. 1; Dkt. 2 at 16:6–10. Because his detention is lawful, and removal is reasonably likely in the foreseeable future, his TRO motion should be denied.

A. Taha is unlikely to succeed on the merits because his detention is lawful.

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 *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas petition, Taha must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. However, his claim that his detention is unlawful lacks merit.

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). Under *Zadvydas v. Davis*, detention for six months following a final removal order is presumptively valid. 533 U.S. 678, 701 (2001). After that time, a noncitizen may request

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[2] Taha purports to bring two independent claims alleging violations of 8 U.S.C. § 1231(a) and its implementing regulations. Dkt. 1 at 14-15. Such claims are barred by 8 U.S.C. § 1231(h). *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (noting noncitizens may not bring causes of action under § 1231; instead, they may rely on 28 U.S.C. § 2241—the general habeas corpus statute—to challenge detention that is without statutory authority). Taha also alleges a violation of the Fifth Amendment, *id.* at 16, but he does not invoke any waiver of the Government's sovereign immunity for such a claim, *see id.* ¶¶ 9-11. Therefore, Federal Respondents construe Taha's claims as a habeas corpus claim under 28 U.S.C. § 2241, as allowed by *Zadvydas*. *See* Dkt. 1 ¶ 10.

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release, and it is his burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The law does not require that "every [noncitizen] not removed must be released after six months." *Id.* Instead, it prevents only "indefinite" or "potentially permanent" detention. *Id.* at 689–91.

Here, Taha does not challenge the validity of his final removal order or that 8 U.S.C. § 1231(a)(6) governs his detention. *See* Dkt. 1 ¶¶ 20, 75. Instead, he argues he should be released pursuant to a TRO because his removal is not reasonably foreseeable for two principal reasons: (1) he is prima facie eligible for TPS, and (2) ICE does not have a travel document. Dkt. 2 at 16. He also argues alleged procedural deficiencies in his re-arrest support a finding that his removal is not reasonably foreseeable. Taha is wrong on all three points.

i. Taha has not established prima facie eligibility for TPS.

Taha misunderstands the TPS framework. Congress has authorized the Secretary of Homeland Security to designate foreign countries for TPS under certain conditions. 8 U.S.C. § 1254a(b)(1).[3] Those found eligible for the TPS program are entitled to certain benefits, including temporary protection from removal and authorization to engage in employment in the United States. *See* 8 U.S.C.A § 1254a(a)(1). But noncitizens from TPS-designated countries are not automatically entitled to TPS benefits; instead, they must submit a registration application for processing and approval. 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.6.

A noncitizen's TPS application must establish three basic criteria for eligibility: (1) he must have "been continuously physically present in the United States since the effective date of the most recent designation" of the foreign country; (2) he must have "continuously resided in the

[3] Although the Immigration and Nationality Act originally granted this authority to the Attorney General, Congress later transferred it to the Secretary of Homeland Security. *See Homeland Security Act of 2002*, Public Law No. 107-296, 116 Stat. 2135 (2002).

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United States since such date as the [Secretary] may designate;" and (3) he must be "admissible as an immigrant" and "not ineligible for temporary protected status" based on his criminal history or other delineated conduct (e.g., terrorist activity or religious persecution of others). 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.2. Congress made certain exceptions to the admissibility requirement, including for individuals who are inadmissible because they lack a valid entry document. *See* 8 U.S.C. § 1254a(c)(2)(A)(i) (incorporating provisions of 8 U.S.C. §§ 1872(a)(5) and (7)(A)); *see also* 8 C.F.R. § 244.3.

The statute also provides for temporary benefits while a TPS application is pending, but only after the noncitizen "establishes a prima facie case of eligibility." 8 U.S.C. § 1254a(a)(4)(B); *see also* 8 C.F.R. § 244.5(b). This prima facie eligibility requirement distinguishes the TPS program from other immigration programs where the mere filing of a benefits application is itself sufficient to trigger temporary benefits. *Compare* 8 U.S.C. § 1154(a)(1)(D) (granting employment authorizations to noncitizens who "filed a petition") *with* 8 U.S.C. § 1254a(a)(4)(B) (making temporary benefits for TPS applicants available only once the noncitizen "establishes a prima facie case of eligibility"). Over 30 years ago, during the public notice-and-comment proceedings concerning these regulations, regulators considered and expressly rejected commenters' suggestion "that temporary treatment benefits should be issued immediately upon the completion of an application which, on its face, establishes the alien's eligibility." 56 Fed. Reg. 23491-02, at 23493 (May 22, 1991). Instead, regulators concluded immigration officials needed to determine an applicant's prima facie eligibility because such officials "must be able to make use of evidence that effectively rebuts the alien's claim to eligibility" before awarding temporary benefits. *Id.*

To establish prima facie eligibility, a TPS applicant must file "a completed application … containing factual information that if unrebutted will establish a claim of eligibility." 8 C.F.R. § 244.1. As relevant here, an applicant establishes prima facie eligibility when USCIS issues an

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employment authorization document (EAD). When a noncitizen applies for TPS and seeks employment authorization, "USCIS will review your case to determine whether you are eligible to work before we make a final decision on your TPS application. If you are found to be eligible upon initial review of your TPS application (prima facie eligible) you will receive an EAD." USCIS, Temporary Protected Status, Application Process, Step 5: USCIS Determines Work Eligibility, https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Apr. 14, 2025).

Here, Taha alleges he "submitted the TPS and work permit applications in January 2025." Dkt. 4 ¶ 24. He further alleges he should have attended a biometrics appointment in connection with his application, but he was unable to. *Id.* He does not allege he has established prima facie eligibility by receiving an EAD. *See id.* This distinguishes him from the petitioners in the cases on which he relies. *See* Dkt. 2 at 12. In *Salad v. Department of Corrections*, the petitioner had established prima facie eligibility. 2025 WL 732305, at *6 (D. Alaska Mar. 7, 2025); *see Osman v. Schmidt*, 2025 WL 870048, at *2 (E.D. Wis. Mar. 20, 2025) (distinguishing *Salad* and noting, "In *Salad* there was no dispute that the petitioner was prima facie eligible for TPS."). And in *Sanchez v. Puentes*, the Court granted a "very temporary release" to the petitioners whose TPS had been previously granted and remained active. Dkt. 2-3 at 4:5–14; 8:15–19 (No. 1:25-cv-509 (E.D. Va. Mar. 28, 2025)).

By contrast, Taha argues merely submitting the application established prima facie eligibility and afforded him protections. *See* Dkt. 2 at 9:15–16. This is the exact theory regulators rejected decades ago, and Taha cites no case where a court has held a TPS applicant was entitled to any protections before establishing prima facie eligibility. *Cf. Osman*, 2025 WL 870048, at *2 ("[Petitioner's] argument seems to be that he is entitled to release in the interim—i.e., before USCIS makes a prima facie determination of his TPS eligibility. But that outcome is not supported

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by the text of the statute or implementing regulations, which afford applicants relief only after the applicant is found prima facie eligible.").

The decades-old internal agency guidance Taha cites do not overrule the statutory and regulatory framework to compel a different result. Taha cites two documents: a 2006 Field Manual for ICE officers, and a 2002 internal memorandum for Immigration and Naturalization Service (INS), the agency that predated ICE. Dkt. 2 at 10. First, these documents are not binding law. *See Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (noting "policy statements, agency manuals, and enforcement guidelines … lack the force of law"). For such a document to have the force and effect of law, it must prescribe substantive rules, i.e., be legislative in nature, and it must conform to procedural requirements imposed by Congress. *Moore v. Apfel*, 216 F.3d 864, 868 (9th Cir. 2000).[4] By contrast, the 2006 ICE Field Manual is an internal guidance document that states, "Nothing in this manual may be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States, its agencies or officers, or any other person." ICE Detention and Deportation Officer's Field Manual (2006), at page 5, https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf. Likewise, the INS document is merely a memorandum distributed to INS lawyers and does not purport to be "legislative in nature." *See Moore*, 216 F.3d at 868.

Second, even if these agency documents were binding, they do not mandate Taha's release. The 2006 ICE Field Manual does not even require that ICE release noncitizens who have been granted TPS. Instead, the manual treats a successful TPS application as merely one factor

[4] *But see Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (noting "an administrative agency is required to adhere to its own internal operating procedures" and analyzing, in this framework, an IRS policy statement in the Policies of the IRS Handbook). However, this Court does not need to determine whether the 2006 ICE Field Manual is binding because, even if it were, it would not compel Taha's release.

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ICE should consider in deciding whether to exercise its discretion to detain noncitizens. The manual provides, "A grant of TPS does not affect the detention status of an alien who is subject to mandatory detention; however, it should be considered when determining the custody of an alien who may be releasable." ICE Field Manual at page 119, § 20.10(b). The 2006 ICE Field Manual, which postdates the 2002 INS memorandum, supersedes the INS's conflicting recommendation regarding detention of TPS applicants. *See* Dkt. 2-2 (INS Memorandum) at 10.[5]

Unless and until USCIS issues an EAD, Taha has not established prima facie eligibility for TPS, and his TPS application affords him no protections.

ii. Due to increased cooperation with Lebanon, Taha's removal is reasonably foreseeable.

Taha's removal is likely in the foreseeable future, and his detention is not indefinite under *Zadvydas*. ICE previously detained Taha for less than six months until it determined removal was not likely in the reasonably foreseeable future. Andron Decl. ¶¶ 9–10. Then, after Taha missed multiple ICE check-ins between March 2024 and January 2025, and as the United States has increasingly cooperated with Lebanon in repatriating its citizens, ICE exercised its discretion to arrest and detain him under 8 U.S.C. § 1231(a)(6) to effectuate his removal. *Id.* ¶¶ 12–16. Since his re-arrest, Taha has been detained less than three months. *See id.* ¶ 16. His detention is not indefinite nor potentially permanent. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3

[5] Taha also claims these internal agency documents prevent his removal. Dkt. 2 at 10. Taha's argument is contrary to Federal Respondents' position that his pending TPS application will not prevent his removal until he establishes prima facie eligibility. The parties' disagreement on this point is of no moment because Taha does not challenge his removal, and 8 U.S.C. § 1252(g) would bar such a challenge in any event.

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(W.D. Wash. May 28, 2013) (Martinez, J.) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order). That Taha does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).

This is particularly true because, since Taha's re-arrest, ICE has been working to effectuate his removal. *See* Andron Decl. ¶ 19. In recent months, the United States has been increasingly working with partner nations to secure agreements allowing for repatriation of their citizens who have been ordered removed from the United States. *Id.* ¶ 20. This has allowed the United States to be able to remove individuals to countries that previously presented obstacles to removal, including Lebanon. *Id.* Indeed, Lebanon has been cooperating with the U.S. government in accepting its nationals who have been ordered removed and has been issuing travel documents for its citizens. *Id.* ¶ 21. ICE has Taha's Lebanese identification card and has submitted a travel document request. *Id.* ¶ 19. Given Lebanon's increased cooperation, ICE believes there is a significant likelihood of removal in the reasonably foreseeable future. *See id.* ¶¶ 21–22. Taha's detention pending removal is also warranted because he has a final removal order and missed multiple check-ins when ICE previously released him, thus presenting a flight risk if he were released. *See id.* ¶¶ 4, 10–15.

iii. Taha's allegedly delayed notice and missed interview do not undermine his detention.

Taha argues that an alleged delay in receiving his formal notice of re-detention and missed interview "demonstrate his removal is not reasonably foreseeable" and, relying largely on case law from the criminal context, that they violate due process. Dkt. 2 at 12–15. That is not the case.

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Contrary to Taha's assertions, he has no protected liberty interest in remaining free from detention where ICE has exercised its discretion under a valid removal order and its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners' claim that § 241.4(l) was a violation of their procedural due process rights and noting, "[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). "While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation "when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in original).

The regulations at 8 C.F.R. § 241.4 allow ICE to revoke a noncitizen's order of supervision when it determines he has violated a condition of release, or when the conduct of the noncitizen, or any other circumstance, indicates that release would no longer be appropriate. Here, Taha has a final removal order, and Lebanon has been cooperating with the United States in the repatriation of its citizens. Andron Decl. ¶¶ 4, 20–22. Taha also violated the conditions of his supervision by missing multiple check-ins. *Id.* ¶¶ 10–15. After those instances of noncompliance, ICE arrested and detained Taha pursuant to its discretion under 8 U.S.C. § 1231(a)(6). *Id.* ¶ 16. Although it is unclear when ICE first issued Taha a notice of his re-detention, he received it no later than March 28, 2025. *See id.* ¶ 17.

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Since his detention, Taha has had conversations with ICE. *See* Andron Decl. ¶¶ 18–19. It is unclear whether those conversations amount to an informal interview, but, even if they do not, the alleged lack of an interview does not entitle Taha to release because it has resulted in no injury to him. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the Court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

The same is true here. Whatever procedural deficiencies may have occurred, they do not warrant Taha's release. He does not challenge his removal order, and an interview would not have resulted in his release because ICE disagrees with his view of the effect of his pending TPS application. Additionally, ICE has submitted a travel document request and expects removal to

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occur in the reasonably foreseeable future because of increased cooperation with Lebanon. Andron Decl. ¶¶ 19–22.

Taha does not claim any court has ordered the release of an immigration detainee with a final removal order because of an alleged regulatory violation. Instead, he cites *Singh v. Gonzalez* and claims the Court there "found that ICE's failure to comply with its own regulations … provide further reason to conclude that removal is not reasonably foreseeable and that release is warranted." Dkt. 2 at 16 (citing 448 F. Supp. 2d 1214, 1219 (W.D. Wash. 2006)) (quotation omitted). That is not the Court's holding in *Singh*. There, ICE argued the petitioner's original 90-day period of mandatory detention in the removal period was extended because he refused to cooperate in securing travel documents. 448 F. Supp. 2d at 1218. The Court disagreed, holding that because ICE had not provided the petitioner a timely Notice of Failure to Comply pursuant to the regulations, the removal period was not extended. *Id.* at 1219. However, the Court did not release the petitioner because of ICE's failure to provide a timely notice. Instead, it analyzed the petitioner's detention under the normal *Zadvydas* framework and concluded that removal was not reasonably foreseeable because India had not issued a travel document, and "ICE merely asserts that it has followed up on its request for travel documents from India and done all it can." *Id.* at 1220. That is not the case here where increased cooperation from Lebanon supports the issuance of a travel document and Taha's removal in the reasonably foreseeable future.

B. Taha has not shown irreparable harm.

Taha has not demonstrated that he will suffer irreparable injury absent his release. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are

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not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Taha argues his detention restraining his physical liberty without just cause constitutes irreparable injury. Dkt. 2 at 16. But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Taha's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). He faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and he has not shown extraordinary circumstances warranting a mandatory TRO.

C. The balance of interests favors the Government.

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *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.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). This public interest outweighs Taha's private interest here. Taha asks the Court to declare his detention unlawful, despite the Government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to valid final removal order that he does not challenge.

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CONCLUSION

For these reasons, Taha has not satisfied the high burden of establishing entitlement to mandatory injunctive relief, and Federal Respondents request this Court deny Petitioner's emergency motion. Because Taha's detention is lawful, Federal Respondents further request the Court deny Taha's habeas corpus petition.

Dated April 14, 2025.

Respectfully submitted,

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