UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Rachad TAHA, et al.,

Petitioner,

v.

Drew BOSTOCK, et al.,

Respondents.

Case No. 2:25-cv-649

MOTION FOR A TEMPORARY RESTRAINING ORDER OR FINAL RULING ON PETITION FOR WRIT OF HABEAS CORPUS

Note on Motions Calendar:
April 10, 2025

ORAL ARGUMENT REQUESTED

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

INTRODUCTION

Petitioner Rachad Taha (Mr. Taha or Petitioner) is a Lebanese noncitizen detained by Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. He is being held despite being prima facie eligible for Temporary Protected Status (TPS)—which prevents his removal under the Immigration and Nationality Act (INA)—and despite ICE's own recent admissions that they lack travel documents to remove him. Indeed, ICE previously released Mr. Taha from custody in 2024 because it could not obtain a travel document to remove him, and he applied for TPS in January 2025 after the Department of Homeland Security designated Lebanon for TPS. As an applicant for TPS who is prima facie eligible, he is entitled to the benefits of that status, including its prohibition on removal. The INA, as well as the Supreme Court's due process precedent regarding indefinite detention for people who cannot be removed, thus make plain that his continued detention is unlawful and compel his immediate release.[1]

STATEMENT OF FACTS

I. Mr. Taha's Removal Proceedings and Subsequent Release

Mr. Taha is a noncitizen from Lebanon. Taha Decl. ¶ 2. He entered the United States in July 2023, and at that time, he expressed a fear of returning to Lebanon. *Id.* ¶ 5; *see also* Maltese Decl. Ex A (Form I-867A, Record of Sworn Statement). Following a screening interview known as a credible fear interview (CFI), U.S. Citizenship and Immigration Services (USCIS) determined that Mr. Taha did not have a reasonable possibility of demonstrating that he would be persecuted if removed to Lebanon. Maltese Decl. Ex. B (Form I-869B, Record of Negative

[1] Concurrent with the filing of the habeas petition and motion, counsel certifies that they are providing notice regarding this filing to the U.S. Attorney's Office for the Western District of Washington via email.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Credible Fear and Reasonable Possibility Finding). As a result, on July 26, 2023, Mr. Taha was ordered removed from the United States pursuant to an expedited removal order. Maltese Decl. Ex. C (Form I-860, Notice and Order of Expedited Removal). An immigration judge subsequently affirmed USCIS's CFI decision. Taha Decl. ¶ 6. While he was in detention, Mr. Taha assisted ICE with efforts to obtain a travel document for his removal to Lebanon. *Id*. ¶ 9.

ICE, however, was unable to execute the removal order. As a result, on January 5, 2024, ICE released Mr. Taha from detention—just shy of six months after he was order removed. Maltese Decl. Ex. D (Form I-286, Notice of Custody Determination); Taha Decl. ¶ 10. ICE did so pursuant to *Zadvydas v. Davis*, a Supreme Court decision that guards against indefinite detention of noncitizens where a person's removal is not foreseeable, and which requires the government to justify any continued detention once removal reaches the six-month mark. 533 U.S. 678, 690–91, 700–01 (2001).

At the time of his release, ICE placed Mr. Taha on an order of supervision, requiring him to comply with periodic check-ins. Maltese Decl. Ex. E (Form I-220B, Order of Supervision); Taha Decl. ¶ 10. ICE also placed an ankle monitor on Mr. Taha and enrolled him in the Intensive Supervision Appearance Program (ISAP), allowing for the agency to continuously monitor him. Maltese Decl. Ex. F (Form 71-071, ATD Enrollment – Notice to Alien); Taha Decl. ¶ 10. Mr. Taha's release was also accompanied by other conditions, such as requirements to update ICE about any change of address and to not commit any crimes. *See* Maltese Decl. Ex. E (Form I-220B, Order of Supervision).

Over the next year, Mr. Taha complied with his check-in requirements and all other conditions of release. Taha Decl. ¶¶ 11–23. Mr. Taha initially relocated to California, but soon moved to live with his uncle near Portland, Oregon. *Id.* ¶ 11. Mr. Taha did so only after first

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

obtaining permission from ISAP officers. *Id*. ISAP removed his ankle monitor around two months later, in light of Mr. Taha's timely and consistent compliance with ISAP program requirements. *Id.* ¶ 17. To conduct most of his check-ins, Mr. Taha used the BI SmartLink app, taking photos of himself and answering phone calls from ISAP officers. *Id.* ¶¶ 15–16. On one occasion, he belatedly performed a check-in after his phone battery died, and an officer warned him that a subsequent tardy check-in could result in restoration of the ankle monitor. *Id.* ¶ 20. Mr. Taha never had any further problems with checking in and did not commit any crimes that could have resulted in revocation of his release. *Id.* ¶ 20; *see generally id.* ¶¶ 11–23. Eventually, Mr. Taha moved in with his partner and her children in Beaverton, Oregon, and once again, he obtained ISAP permission before doing so. *Id.* ¶ 18. Throughout this entire time, Mr. Taha also made efforts to obtain a new Lebanese passport (his previous one had been stolen), as requested by ICE. *Id.* ¶¶ 21–23.

II. Mr. Taha's Re-detention

On January 26, 2025, Mr. Taha received a notification via the BI SmartLink app requesting that he immediately present himself at the ICE office in Portland. *Id.* ¶ 25. As he always did, Mr. Taha immediately complied. *Id.* ¶¶ 25, 27. Upon arrival, ICE re-detained Mr. Taha despite his compliance with his release conditions and his efforts to obtain a new passport. *Id.* ¶ 27. At the time of his arrest, ICE did not provide any notice of the reason for his arrest, other than to say that his name was on a list of people with final orders of removal. *Id.* ¶¶ 26–28. ICE did not provide Mr. Taha with an opportunity to contest the basis for his re-detention or any information that would indicate his removal was now reasonably foreseeable. *Id.* ¶¶ 26–30. Indeed, upon his transfer to NWIPC, an ICE officer simply explained that Mr. Taha had been re-arrested "because of Trump." *Id.* ¶ 28.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Prior to his arrest, in December 2024, Mr. Taha had retained a law firm in Oregon to apply for Temporary Protected Status (TPS). *Id.* ¶ 24. The previous month, on November 27, 2024, the Department of Homeland Security (DHS) designated Lebanon for TPS. *See* Designation of Lebanon for Temporary Protected Status, 89 Fed. Reg. 93641 (Nov. 27, 2024). Pursuant to that designation, Lebanese noncitizens in the United States who have resided here since October 16, 2024, may apply for and receive TPS, as well as its protection against removal and provision of work authorization. *See generally* 8 U.S.C. § 1254a. In his application, Mr. Taha provided evidence of his continuous residence in the United States since October 2024 and his Lebanese nationality. Taha Decl. ¶ 24. Mr. Taha has no criminal history in the United States or Lebanon, and none of the bars to obtaining TPS apply to him. *See* 8 U.S.C. § 1254a(c)(1)(A); Maltese Decl. Ex. G (FBI Criminal History Report).[2] Mr. Taha's counsel filed his application for TPS with USCIS around the time that he was detained. Maltese Decl. Ex. H (TPS Application Receipt Notice). On February 4, 2025, USCIS issued a notice explaining that the agency had receipted Mr. Taha's application on January 30, 2025. *Id.*

Following his re-detention, Mr. Taha repeatedly sent inquiries to ICE officers at NWIPC asking why he had been detained, and noting that he had a pending application for TPS. Taha Decl. ¶¶ 29–30. On one occasion, ICE responded, again simply noting that Mr. Taha had a final order of removal. *Id.* ¶ 29. ICE never responded to Mr. Taha's other messages, explained why the agency now believed it could remove him, or why the agency could remove him notwithstanding his pending TPS application. *Id.* ¶¶ 29–30.

[2] The FBI report was obtained by Mr. Taha's previous immigration counsel pursuant to a FOIA request. It shows redacted information for an arrest from June 10, 2023. This arrest is immigration-related and is likely from the Panamanian authorities who processed Mr. Taha after he entered Panama en route to the United States. Taha Decl. ¶ 4.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

In March 2025, after ICE repeatedly failed to respond to his inquiries or release him, Mr. Taha retained the services of the Northwest Immigrant Rights Project to assist him in requesting release. *Id.* ¶ 32. His counsel then contacted James Yi, Deputy Chief Counsel for ICE's Office the Principal Legal Advisor, to request release. In that email, counsel explained that Mr. Taha was prima facie eligible for TPS and therefore entitled to the benefits of TPS, including its protection against removal. Stopher Decl. ¶ 5; Maltese Decl. Ex. I (Emails). Rather than releasing Mr. Taha, Acting Deputy Field Office Director Erik Johnson issued Mr. Taha a Notice of Revocation of Release, over two months after he had been re-detained. Maltese Decl. Ex. J (Notice of Revocation of Release). This was the first explanation of his re-detention that Mr. Taha received since being arrested in January. *See* Taha Decl. ¶¶ 26–35. The notice asserted that "changed circumstances" justified Mr. Taha's re-detention and claimed that Mr. Taha's "case is under current review by Lebanon for the issuance of a travel document." Maltese Decl. Ex. J (Notice of Revocation of Release). The notice also stated that Mr. Taha would be "promptly be afforded an informal interview" at which he would "be given an opportunity to respond to the reasons for the revocation." *Id.* Mr. Taha's counsel subsequently requested that she be present for the interview. Stopher Decl. ¶ 7. ICE has not yet held or scheduled this "prompt[]" interview. Taha Decl. ¶ 34; Stopher Decl. ¶ 11; *see also* 8 C.F.R. §§ 241.4(*l*)(1), 214.13(i)(3) (requiring prompt interview of person re-detained following release pursuant to *Zadvydas* and the regulations implementing that decision).

Following the revocation notice, on April 3, counsel for Mr. Taha again wrote James Yi, reiterating the request for Mr. Taha's release and explaining that his removal is not foreseeable given the pending TPS application. Stopher Decl. ¶ 8; Maltese Decl. Ex. I. Counsel explained that the NWIRP would pursue litigation on Mr. Taha's behalf if he was not released. Maltese

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Decl. Ex. I. Mr. Yi has not responded to this latest request and counsel's efforts to address this matter short of litigation. Stopher Decl. ¶ 8; Maltese Decl. Ex. I (Emails). Mr. Taha remains detained at NWIPC. Taha Decl. ¶¶ 35, 37–38.

ARGUMENT

On a motion for a TRO, the movant "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); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (second alteration in original) (citation omitted). To succeed under the "serious question" test, Mr. Taha must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

I. Mr. Taha is likely to succeed on the merits of his argument that his removal is not reasonably foreseeable and that he is entitled to immediate release.

Mr. Taha's current detention is unlawful because he is prima facie eligible for TPS and ICE has yet to obtain any travel documents for him. Each reason independently demonstrates his removal not reasonably foreseeable and that his continued detention violates the Due Process Clause of the Fifth Amendment and the INA. Moreover, ICE has failed to afford Mr. Taha any meaningful process prior to revoking his release that justifies his re-detention through a showing of changed circumstances.

As a person with a final order of removal, Mr. Taha is subject to detention under § 1231. That statute provides that DHS "shall remove" such individuals during a 90-day "removal

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

period," during which DHS "shall detain" the noncitizen. 8 U.S.C. § 1231(a)(1)(A)–(B), (a)(2)(A). However, "[i]f the [noncitizen] does not leave or is not removed within the removal period, the [noncitizen] . . . shall be subject to supervision"—that is, released under conditions. *Id.* § 1231(a)(3). Only where the individual is deportable or inadmissible on certain grounds, or "has been determined . . . to be a risk to the community or unlikely to comply with the order of removal," the individual "may be detained beyond the [90-day] removal period." *Id.* § 1231(a)(6).

This case concerns discretionary detention under the authority of § 1231(a)(6), as Mr. Taha is far beyond the 90-day removal period of § 1231(a). In *Zadvydas*, the Supreme Court found § 1231(a)(6) "ambiguous" as to the length of post-removal-period detention it authorizes. 533 U.S. at 697. Applying the constitutional avoidance canon, the Court construed the statute to contain an "implicit 'reasonable time' limitation" of six months. *Id.* at 682; *see also id.* at 700–01. The Court concluded that the statute does not permit continued incarceration after six months "if removal is not reasonably foreseeable." *Id.* at 699. And even "if removal is reasonably foreseeable," the Court held, detention is permitted only if there is a sufficient "risk of the [noncitizen]'s committing further crimes." *Id.* at 700. Accordingly, "once the [noncitizen] 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." *Id.* at 701. Where the Government fails to justify continued detention under § 1231, this Court may order immediate release. *See, e.g.*, *Jatta v. Clark*, No. C19-2086-MJP-MAT, 2020 WL 7138006, at *2 (W.D. Wash. Dec. 5, 2020); *Tkachev v. ICE Field Off. Dir.*, No. C20-532-RSL-MLP, 2020 WL 6947356, at *3 (W.D. Wash. Oct. 9, 2020), *R&R adopted*, 2020 WL 6939639 (W.D. Wash. Nov. 25, 2020).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Situations like the one in *Zadvydas* often arise where a person's country of origin is unwilling to provide a travel document for that person. *See generally* 8 C.F.R. § 241.4 (providing procedures for a person's detention where ICE is in the process of obtaining a travel document). Under *Zadvydas* and the regulations ICE issued following that case, Respondents have historically released persons after six months if ICE is unable to obtain a travel document after six months of § 1231(a)(6) detention. *See* 8 C.F.R. § 241.13(g)(1) (requiring DHS to "promptly . . . release" an individual where "there is no significant likelihood of removal"). These authorities provided the basis for Mr. Taha's release in January 2024, when ICE placed him under supervision with an ankle monitor around six months after his removal order became final. *See supra* p. 2.

Against this legal and factual backdrop, the government cannot justify Mr. Taha's renewed detention for two independent reasons: (1) Mr. Taha's prima facie eligibility for TPS and (2) Respondents' failure to obtain a travel a document. Each of these reasons provides a basis for this Court to order Mr. Taha's immediate release.

First, Mr. Taha has presented an application for TPS that demonstrates prima facie eligibility for that status, which explicitly bars his removal. Congress established TPS as part of the Immigration Act of 1990, Pub L. No. 101-649, § 302, 104 Stat. 4978, 5030–36, to provide temporary relief to noncitizens from countries facing wars, disasters, or emergencies that make safe return to their countries of origin impossible. Pursuant to that authority, the Secretary of Homeland Security (DHS Secretary) may designate a country for TPS where such conditions exist. *See* 8 U.S.C. § 1254a(b)(1). TPS designations last between six and eighteen months, and may be extended. *Id.* § 1254a(b)(2)–(3). To qualify for TPS, a national of a TPS-designated country must apply during DHS's registration period, meet certain physical presence and

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

residence requirements in the United States, and be "admissible as an immigrant," with certain exceptions and opportunities for waivers. *Id*. § 1254a(c)(1)(A)(i)–(iv).

Once approved, a TPS applicant is entitled to several key benefits, including that DHS "shall not remove the [noncitizen] from the United States during the period in which [TPS] status is in effect." *Id*. § 1254a(a)(1)(A). Critically, this same benefit applies during the application period. Under the TPS statute, the prohibition on removal and grant of employment authorization also extend to TPS applicants. *Id.* § 1254a(a)(4)(B). Such "temporary" benefits "shall" be granted when an applicant "establishes a prima facie case of eligibility for benefits," and those benefits remain effective "until a final determination with respect to the [noncitizen's] eligibility for such benefits . . . has been made." *Id.* § 1254a(a)(4)(B). Taken together, these provisions guarantee TPS-eligible noncitizens the right to a prohibition on their removal from the time they apply for TPS through the time their country's TPS designation ends or TPS is otherwise withdrawn. S*ee id.* § 1254a(c)(3).

Notably, ICE and USCIS policy reflect this statutory prohibition on removal. For example, ICE policies provide that TPS applicants should not be removed and that potential TPS applicants who demonstrate eligibility must be released from detention. *See, e.g.*, Immigr. & Customs Enf't, *Detention and Deportation Officer's Field Manual* § 20.10(b) (2006), https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf; ("[Noncitizens] who have registered for TPS may not be removed from the United States."); *see also* 8 C.F.R. § 244.1 (defining "Register" for purposes of TPS as meaning "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under [8 U.S.C. § 1254a(b)]"); U.S. Dep't of Just., Immigr. & Naturalization Serv., *Administrative Closure When Alien is Prima Facie Eligible for TPS or DED*, HQCOU 120/12.2-

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

P, at 9 (Feb. 7, 2002) (Att. A) ("INS *must* release detained individuals who may be eligible for TPS and who wish to apply for such protection. Release is not contingent upon . . . filing or adjudication . . . ."). Similarly, USCIS's regulation states that "[u]pon the filing of an application for Temporary Protected Status, the [noncitizen] shall be afforded temporary treatment benefits, if the application establishes the [noncitizen]'s prima facie eligibility for Temporary Protected Status." 8 C.F.R. 244.5(b). These benefits "shall remain in effect until a final decision has been made on the application for Temporary Protected Status." *Id.* § 244.10(e)(2); *see also id.* § 244.13(a) ("Temporary treatment benefits terminate upon a final determination with respect to the [noncitizen]'s eligibility for Temporary Protected Status."). Notably, prima facie eligibility is "established *with the filing of a completed application* for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility." *Id.* § 244.1 (emphasis added).

This statutory framework demonstrates that Mr. Taha's removal is not reasonably foreseeable and that his immediate release is warranted. As a person who has submitted an application demonstrating prima facie eligibility for TPS, Mr. Taha is entitled to protection from removal under 8 U.S.C. § 1254a(a)(1)(A) and (a)(4)(B). It directly follows that his removal is *not* foreseeable; after all, the law explicitly forbids his removal.

Other courts have granted habeas petitions in similar situations as the government has recently targeted for deportation persons with final orders of removal. For example, in *Salad v. Department of Corrections*, the U.S. District Court for the District of Alaska granted a habeas petition for a noncitizen for whom ICE *had* a travel document, but who had a pending TPS application for Somalia. --- F. Supp. 3d ---, 3:25-cv-00029-TMB-KFR, 2025 WL 732305 (D. Alaska Mar. 7, 2025). As the court explained, "the INA prohibits removal of an individual who

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

is *prima facie* eligible for TPS." *Id.* at *6. Given that fact and other related TPS protections, the Court held that "there is no significant likelihood of removal in the reasonably foreseeable future" and ordered the release of the petitioner. *Id.* Similarly, in a habeas petition in the Eastern District of Virginia, the court granted the habeas petition and issued final judgment for petitioners in active TPS status just days after the case was filed. *See, e.g.*, Transcript of Writ Hearing at 8:15–9:13, *Sanchez v. Puentes*, No. 1:25-cv-509 (E.D. Va. Mar. 28, 2025) (Att. B) (granting habeas petition and ordering immediate release of noncitizen petitioner in case filed a few days earlier because persons were in active TPS status and government had no reason to detain them). The Court should do the same here, as the INA expressly prohibits Mr. Taha's removal. *Cf. Nadarajah v. Gonzales*, 443 F.3d 1069, 1081–82 (9th Cir. 2006) (holding that removal of noncitizen was not reasonably foreseeable where the noncitizen had been granted asylum and protection under the Convention against Torture, which prohibit removal to a designated country).

Even if TPS eligibility did not provide a basis for Mr. Taha's immediate release, other facts also demonstrate his removal is not reasonably foreseeable. In the belated Notice of Revocation of Release that ICE provided to Mr. Taha, the agency acknowledged that it does not even have a travel document. *See* Maltese Decl. Ex. J (Notice of Revocation of Release). Even so, ICE arrested Mr. Taha. ICE's bare and self-serving recitation that Lebanon is allegedly cooperating in obtaining a travel document cannot now justify Mr. Taha's detention. This is particularly true, where, as here, Mr. Taha has cooperated in attempting to obtain travel documents and where he was previously released despite those efforts because of ICE's inability to obtain a travel document. *See, e.g.*, *Xi v. I.N.S.*, 298 F.3d 832, 834–36 (9th Cir. 2002) (ordering release of Chinese national pursuant to *Zadvydas* where noncitizen had recently

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

cooperated in seeking to obtain travel document and China had not provided a travel document); *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189–90 (W.D. Wash. 2006) (granting habeas petition where noncitizen had been detained for eight months and no travel documents had been produced); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash., April 15, 2002) (granting petitioner habeas corpus relief where government failed to offer any "specific information regarding how or when [it] expect[ed] to obtain the necessary documentation or cooperation from the Ethiopian government"); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *4 (D. Ariz. Aug. 30, 2011) (recommending grant of habeas petition where respondents merely "stat[ed] that the travel document request is 'pending'"), *R&R adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011). Indeed, as noted above, in *Zadvydas*, the Court explained that even where "removal *is* reasonably foreseeable," detention is permitted only if there is a sufficient "risk of the [noncitizen]'s committing further crimes." 533 U.S. at 700 (emphasis added). Here, no evidence exists that Mr. Taha presents a danger and his lengthy history of compliance with his order of supervision, fixed residence, and ties to the Oregon area demonstrate he is not a flight risk. *See generally* Taha Decl. ¶¶ 10–23, 40; Maltese Decl. Ex. G (FBI Criminal History Report).

The passage of time since Mr. Taha's re-detention only highlights this point. If a travel document has been issued (and if the TPS application did not otherwise bar removal), then Respondents would have a basis to argue that removal is reasonably foreseeable. But since being re-detained in January, Mr. Taha has spent months in detention—without ever being removed, and without ICE obtaining a travel document. *See* Maltese Decl. Ex. J(Notice of Revocation of Release). That fact only underscores that ICE's continued detention of Mr. Taha lacks any connection to the agency's detention authority under 8 U.S.C. § 1231(a)(6).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Finally, ICE's failure to follow its own procedures in re-detaining Mr. Taha underscores the propriety of release. Under governing regulations, ICE must "afford[] [Mr. Taha] an initial informal interview promptly after his . . . return to Service custody to afford [him] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(*l*)(1); *see also id.* § 241.13(i)(3) (similar). Yet following his arrest, ICE did not provide a notice of the reason for revocation until two months later, when his counsel requested his release. Moreover, Mr. Taha has never received the "prompt" interview ICE's own regulations requires, and ICE has never explained the basis for the "changed circumstances" justifying his re-detention, other than to claim that "[y]our case is under current review by Lebanon for the issuance of a travel document." Maltese Decl. Ex. J(Notice of Revocation of Release).[3]

Even had ICE provided its informal interview, however, due process would demand more and underscores the need for the Court's immediate intervention here. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—*even if that freedom is lawfully revocable*—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (emphasis added). As the *Hurd* court explains, this includes cases of "pre-parole conditional supervision," *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," *id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)); and "parole," *id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).

[3] Notably, this failure to provide notice and an opportunity to be heard—the most basic of due process protections—appears to be a systemic problem at NWIPC. *See, e.g.*, Resp'ts' Answer & Return to Pet. for Writ of Habeas Corpus at 16, *Waterhouse v. Bostock*, No. 2:24-cv-650-JNW-GJL (W.D. Wash. July 24, 2024), ECF No. 8 (acknowledging that ICE failed to provide the interview and notice required by 8 C.F.R. § 241.4(*l*)(1) to another recently detained person).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Notably, the principles from these cases apply with even greater force to individuals like Mr. Taha, who have been released in civil immigration proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. "Given the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Parolees and probationers have a diminished liberty interest because of their underlying convictions. *See, e.g.*, *United States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible punishments . . . ." (internal quotation marks and citation omitted)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled . . . ." (internal quotation marks and citation omitted)). Nonetheless, even in the criminal parole and supervised release context, courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See, e.g.*, *Hurd*, 864 F.3d at 684. These principles have repeatedly led other courts to require a hearing prior to or shortly after a non-citizen's re-detention where the government must justify its decision to detain a person once more. *See Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055–56 (N.D. Cal. 2021) (pre-deprivation hearing); *Perera v. Jennings*, 598 F. Supp. 3d 736, 745–46 (N.D. Cal. 2022) (post-deprivation hearing).

Here, Mr. Taha not even received an "informal interview" before the "government enforcement agent," *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), much less a hearing before a neutral decisionmaker, *see, e.g.*, *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

and disengagement from activities of law enforcement."); *see also Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar). In similar circumstances, this Court has found that ICE's "fail[ure] to comply with its own regulations" implementing the protections of *Zadvydas* provide further reason to conclude that removal is not reasonably foreseeable and that release is warranted. *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1219 (W.D. Wash. 2006).

In the end, however, the fact remains that (1) Mr. Taha is prima facie eligible for TPS, and (2) ICE itself admits there is no travel document. Under these circumstances—especially given the lack of any procedures to protect against unnecessary detention—Mr. Taha's immediate release is warranted under the INA and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690–91, 701.

II. Mr. Taha will suffer irreparable harm absent an injunction.

Parties seeking a TRO 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." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, Mr. Taha's unlawful detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk). This is particularly true here, where Mr. Taha's detention also violates the Constitution. Civil immigration 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). As

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

detailed above, Mr. Taha's detention is outside of those "special and narrow nonpunitive circumstances," as the Due Process Clause forbids the indefinite detention he faces due to the lack of foreseeability in his removal. *See Zadvydas*, 533 U.S. at 690–91, 701. These constitutional concerns also counsel in favor of finding that Mr. Taha has demonstrated irreparable harm, for he has demonstrated that his detention violates the Constitution. *See Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").

Detention also inflicts substantial harm on Mr. Taha by separating him from his family members. Absent a TRO, Mr. Taha has no hope of being reunited with his partner, her children, and other family members, like his uncle. *See* Taha Decl. ¶¶ 18, 37, 40. Such "separation from family members" is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]"); *cf. Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (recognizing that "government-compelled [family] separation" causes family members "trauma" and "other burdens").

Detention has also taken an emotional and mental toll on Mr. Taha. *See* Taha Decl. ¶ 37 ("Being detained has been very hard on me. Reliving this trauma is very difficult. I was already detained once and I did not think I would have to live through this horrible situation again."). Such "emotional stress, depression and reduced sense of well-being" further support a finding of irreparable harm. *Chalk v. U.S. Dist. Ct. C.D. Cal.*, 840 F.2d 701, 709 (9th Cir. 1988); *see also Moreno II*, 492 F. Supp. 3d at 1181–82 ("[S]tress, devastation, fear, and depression" arising from

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

unlawful immigration policy are the type of "harms [that] will not be remedied by an award of damages.").

In sum, Mr. Taha is suffering numerous and irreparable harms: detention itself, separation from his family, and emotional harm. All of these warrant a TRO or simply granting the habeas petition itself.

III. The balance of hardships and public interest weigh heavily in Mr. Taha'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). Here, Mr. Taha faces weighty hardships: loss of liberty, separation from family, and significant stress and anxiety. *See supra* Sec. II. The government, by contrast, faces no hardship, as all it must do is release a person who is legally entitled to release. Avoiding such "preventable human suffering" strongly tips the balance in favor of Mr. Taha. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

What is more, because Mr. Taha's detention "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145. "The public interest benefits from an injunction

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal bond] process." *Hernandez*, 872 F.3d at 996.[4]

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents comply with federal law and release Mr. Taha.

CONCLUSION

For the foregoing reasons, Mr. Taha respectfully requests the Court grant his motion for a temporary restraining order. Alternatively, after hearing from Respondents, this Court should convert this motion into a final ruling on the habeas petition and grant the petition for a writ of habeas corpus. *See* 28 U.S.C. § 2243 (instructing courts to "forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted" and requiring a government response to the writ "within three days"); *id.* ("The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."). *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (instructing district courts to expeditiously rule on habeas petitions because the writ is intended to be a "swift and imperative remedy in all cases of illegal restraint or confinement" (citation omitted)).

Respectfully submitted this 10th of April, 2025.

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT

[4] 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.

615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

Counsel for Petitioner

WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,587 words, in compliance with the Local Civil Rules.

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 816-3872
aaron@nwirp.org