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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

IRFAN POPELZAI,  
Petitioner,  
v.  
CHRISTOPHER CHESTNUT,  
Respondent.

No. 1:26-cv-01618-DJC-CKD

ORDER

Petitioner Irfan Popelzai is an immigration detainee proceeding with a Petition for Writ of Habeas Corpus (Pet. (ECF No. 1)) and Motion for Temporary Restraining Order (Mot. (ECF No. 9)). The Court previously informed the parties that it intended to rule directly on the merits of the Petition. (ECF No. 10.) However, Respondent has objected to the Court reaching the merits without additional time to file an answer. (Opp’n (ECF No. 12) at 6.) As such, the Court will rule only on the Motion for Temporary Restraining Order which it shall convert to a Motion for Preliminary Injunction in light of the relief granted.

**BACKGROUND**

Petitioner is a citizen of Afghanistan presently in the custody of Immigration and Customs Enforcement (“ICE”). (Mot. at 3; Opp’n at 1.) It is undisputed that Petitioner has been subject to a final order of removal since September 2024. (Mot. at 3; Opp’n

1 at 2.) Petitioner was also granted withholding of removal to Afghanistan. (Mot. at 3;  
2 Opp'n at 5.) Petitioner was subsequently released from custody by ICE on an order of  
3 supervision. (Mot. at 3; Opp'n at 1.) On December 1, 2025, Petitioner was re-  
4 detained by ICE.

## 5 LEGAL STANDARD

6 The standards for issuing a temporary restraining order and a preliminary  
7 injunction are "substantially identical." See *Stuhlberg Int'l Sales Co. v. John D. Brush &*  
8 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain preliminary injunctive relief,  
9 Petitioner must show (1) likelihood of success on the merits; (2) likelihood of  
10 irreparable harm in the absence of preliminary relief; (3) that the balance of equities  
11 tips in her favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res.*  
12 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "[I]f a plaintiff can only show that there are  
13 'serious questions going to the merits' – a lesser showing than likelihood of success  
14 on the merits – then a preliminary injunction may still issue if the 'balance of hardships  
15 tips sharply in the plaintiff's favor,' and the other two Winter factors are satisfied." *All.*  
16 *for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017) (citations omitted).  
17 The Ninth Circuit employs a sliding scale approach to the Winter factors, under which  
18 a strong showing on the balance of hardships may compensate for a lesser showing of  
19 likelihood of success. See *Where Do We Go Berkeley v. California Dep't of Transp.*, 32  
20 F.4th 852, 859 (9th Cir. 2022).

## 21 DISCUSSION

### 22 I. Likelihood of Success on the Merits

23 Petitioner is likely to succeed on the merits of his claim that his re-detention  
24 violates 8 C.F.R. § 241.13(i)(2) and is unconstitutional as it amounts to indefinite  
25 detention. It is undisputed that Petitioner is subject to a final removal order. As such,  
26 ICE has the authority to detain Petitioner to affect his removal as a non-citizen. See  
27 *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at \*3 (E.D. Cal. July  
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1 16, 2025); see also 8 U.S.C. § 1231. However, Petitioner was previously released from  
2 custody.

3 Where a noncitizen subject to a final order of removal has been released,  
4 revocation of that release is governed by 8 C.F.R. § 241.13(i). See *Hoac v. Becerra*, No.  
5 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*3 (E.D. Cal. July 16, 2025). Section  
6 241.13(i)(2) provides that revocation of release is permissible “if, on account of  
7 changed circumstances, the Service determines that there is a significant likelihood  
8 that the alien may be removed in the reasonably foreseeable future.” The Court may  
9 not, in the first instance, make an individualized finding that a change in circumstances  
10 has occurred. See *Hoac*, 2025 WL 1993771, at \*3. “[W]hen ICE revokes release to  
11 effectuate removal, it is ICE's burden to show a significant likelihood that the alien may  
12 be removed.” *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO, 2025 WL 3114341, at \*5 (E.D.  
13 Cal. Nov. 6, 2025) (cleaned up) (quoting *Escalante v. Noem*, No. 9:25-cv-00182-MJT,  
14 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025)); see *Nguyen v. Charles*, No. 1:25-cv-  
15 01592-TLN-CSK, 2025 WL 3492117, at \*3 (E.D. Cal. Dec. 4, 2025). Where ICE has  
16 made a determination that a change of circumstances has occurred, the Court reviews  
17 that claim in light of the factors described in 8 C.F.R. § 241.13(f). See *Hoac*, 2025 WL  
18 1993771, at \*3. These factors include, but are not limited to:

19 [T]he history of the alien's efforts to comply with the order  
20 of removal, the history of the Service's efforts to remove  
21 aliens to the country in question or to third countries,  
22 including the ongoing nature of the Service's efforts to  
23 remove this alien and the alien's assistance with those  
24 efforts, the reasonably foreseeable results of those efforts,  
and the views of the Department of State regarding the  
prospects for removal of aliens to the country or countries  
in question.

25 8 C.F.R. § 241.13(f).

26 Here, there is absolutely no indication of a change in circumstances justifying  
27 re-detention. Respondents do not present argument or evidence that removal is at all  
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1 foreseeable. Respondents argue that the Court “must allow for the detention of  
2 Petitioner to execute a final removal order” (Opp’n at 5), but fail to meet their burden  
3 to at all establish re-detention is warranted or permissible. In fact, Respondents  
4 acknowledge that Petitioner has been granted withholding of removal to Afghanistan  
5 (*id.* 5 n.1), yet fail to identify a possible third country where Petitioner might be  
6 removed.

7 Given the above, Respondents have failed establish that any of the factors  
8 under 8 C.F.R. § 241.13(f) weigh in favor of a finding that there has been a change in  
9 circumstances. Respondents have thus failed to carry their burden that there has  
10 been a change in circumstances.<sup>1</sup> Accordingly, Petitioner has establish a likelihood of  
11 success on the merits that his present detention violates 8 C.F.R. § 241.13 and is thus  
12 unlawful.

13 Petitioner will suffer irreparable harm in the absence of preliminary relief. The  
14 Ninth Circuit has recognized the irreparable harm inflicted by the “subpar medical and  
15 psychiatric care in ICE detention facilities.” *Hernandez v. Sessions*, 872 F.3d 976, 995  
16 (9th Cir. 2017). More broadly, the Ninth Circuit has also acknowledged the  
17 “irreparable harms imposed on anyone subject to immigration detention” including  
18 “the economic burdens imposed on detainees and their families as a result of  
19 detention.” *Id.* Petitioner has thus established irreparable harm.

20 The final two *Winter* factors merge when the government is the nonmoving  
21 party. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). The interests of equity and  
22 the public weigh in favor of Petitioner here. As discussed above, Petitioner is harmed  
23 by his present detention. A preliminary injunction also inflicts minimal harm to the  
24 Government. Though Respondents have an interest in enforcing immigration laws,  
25 “the public has a strong interest in upholding procedural protections against unlawful  
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27 <sup>1</sup> In so finding, the Court does not determine that it is necessarily impossible that Respondents will be  
28 unable to show a change of circumstances in the future. But it is Respondents’ burden to establish a  
change in circumstances and they are clearly unable to meet that burden at this time.

1 detention, and the Ninth Circuit has recognized that the costs to the public of  
2 immigration detention are staggering.” *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL  
3 1676854, at \*3 (N.D. Cal. June 14, 2025). “[N]either equity nor the public’s interest are  
4 furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th  
5 821, 832 (9th Cir. 2022). For these reasons, the Court concludes that the equities and  
6 public interest weigh in favor of Petitioner.

7 Respondents also argue that the Court should not grant the “the same ultimate  
8 relief Petitioner seeks in the underlying habeas petition” via the motion for temporary  
9 restraining order. (Opp’n at 4.) For the reasons discussed in the Court’s order in *Doe*  
10 *v. Becerra*, 787 F. Supp. 3d 1083, 1090 (E.D. Cal. 2025), the Court rejects this  
11 argument.

12 “The court may issue a preliminary injunction or a temporary restraining order  
13 only if the movant gives security in an amount that the court considers proper to pay  
14 the costs and damages sustained by any party found to have been wrongfully  
15 enjoined or restrained.” Fed. R. Civ. P. 65(c). The Court has “discretion as to the  
16 amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th  
17 Cir. 2003). Because the Government cannot reasonably assert that it is harmed by  
18 conforming to its own regulations, the Court finds “there is no realistic likelihood of  
19 harm to the defendant from enjoining his or her conduct.” *Id.* Thus, the Court  
20 concludes no security is required here.

## 21 CONCLUSION

22 In accordance with the above, IT IS HEREBY ORDERED that:

- 23 1. Petitioner’s Motion for Temporary Restraining Order (ECF No. 9) is  
24 converted to a Motion for Preliminary Injunction and is GRANTED.
- 25 2. Respondents are ordered to immediately release Petitioner Irfan  
26 Popelzai from their custody. Respondents shall not impose additional  
27 restrictions on him than were already present prior to Petitioner’s current  
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detention, unless they are determined to be necessary at a future pre-deprivation/custody hearing.

3. Respondents are ENJOINED AND RESTRAINED from re-arresting or re-detaining Petitioner a change in circumstances to warrant Petitioner's re-detention.
4. This matter is referred to the assigned Magistrate Judge for all further proceedings.

IT IS SO ORDERED.

Dated: March 20, 2026

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE