

1 ADAM GORDON
United States Attorney
2 ERIN M. DIMBLEBY
Assistant U.S. Attorney
3 California Bar No. 323359
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Tel: (619) 546-6987
6 Fax: (619) 546-7751
Email: Erin.Dimbleby@usdoj.gov

7 Attorneys for Respondents
8

9
10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11 HAVVA KHALILOVA,

12 Petitioner,

13 v.

14 KENNETH C. SMITH; et al.,

15
16 Respondents.
17

Case No.: 25-cv-2140-JLS-DDL

**RETURN IN OPPOSITION
TO PETITION FOR WRIT
OF HABEAS CORPUS**

18
19
20
21
22 **INTRODUCTION**

23 Petitioner requests that this Court order Immigration and Customs Enforcement
24 (ICE) to release her from custody because, she alleges, her detention is unlawful and
25 prolonged. She was ordered removed from the United States on July 28, 2025, and was
26 granted withholding of removal to Azerbaijan that same day. Petitioner is subject to a final,
27 executable order of removal, which means that she has no right to remain in the United
28 States. Although she may not be repatriated to Azerbaijan, she may be resettled in a third

country. Under 8 U.S.C. § 1231(a), ICE has authority to detain a noncitizen for 90 days to execute removal, and the Supreme Court has held that detention is presumptively reasonable for six months. Here, the presumptively reasonable six-month removal period for ICE to effect removal has not ended. ICE is actively working to effect Petitioner's removal to a third country. As Petitioner has failed to name her immediate custodian as a respondent, the Court lacks jurisdiction over this matter. However, curing that defect before the six-month presumptively reasonable period has ended is futile. Alternatively, Petitioner has not provided good reason to believe that there is no significant likelihood of her removal in the reasonably foreseeable future. The Court should deny the petition.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Azerbaijan. On December 1, 2024, Petitioner entered the United States between ports of entry at or near Tecate, California. Exhibit 1.¹ She was not then in possession of any valid entry documents. Customs and Border Protection (CBP) determined that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed her in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). *Id.* Petitioner was detained by CBP and subsequently transferred to ICE custody and detained at the Otay Mesa Detention Center. Declaration of David Townsend (Decl. Townsend), at ¶ 4.

On January 13, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B), Petitioner was interviewed by a U.S. Citizenship and Immigration Services asylum officer to determine whether she had a credible fear of persecution or torture if removed to Azerbaijan. Decl. Townsend, at ¶ 5. The interview resulted in a negative determination. *Id.* On January 28, 2025, pursuant to 8 U.S.C. § 1225(b)(1)(B), an immigration judge reviewed and vacated the asylum officer's determination. Exhibit 2. On February 4, 2025, the Department of Homeland Security (DHS) issued Petitioner a Notice to Appear (NTA), charging her as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Exhibit

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

3. On February 4, 2025, the NTA was filed with the immigration court, thereby commencing removal proceedings under 8 U.S.C. § 1229a. *Id.* Petitioner remained detained in ICE custody under 8 U.S.C. § 1225(b)(1)(B)(ii), as her detention was mandatory. Decl. Townsend, at ¶ 8. On April 21, 2025, a bond hearing was held and the immigration judge (IJ) denied bond, finding that Petitioner was subject to mandatory detention. Exhibit 4 (citing *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)).

On July 28, 2025, Petitioner appeared for an individual hearing before an IJ. Exhibit 5. The IJ found Petitioner removable under 8 U.S.C. § 1182(a)(6)(A)(i), ordered that Petitioner be removed from the United States, denied her application for asylum, and granted her application for withholding of removal under 8 U.S.C. § 1231(b)(3).² Exhibit 5.

On August 21, 2025, ICE submitted resettlement requests to Armenia, Hungary, and Canada. Decl. Townsend, at ¶ 10. To date, the Hungarian Consulate General has responded that the request has been forwarded to the Hungarian Ministry of Foreign Affairs and Trade. *Id.* The Canadian Embassy has denied the resettlement request. *Id.* ICE remains actively working to locate a third country for resettlement and to effect Petitioner's removal to a third country. *Id.*

ARGUMENT

A. The Court Lacks Jurisdiction Over the Petition

At the outset, the Court should deny Petitioner's habeas petition because she has failed to name as a respondent the warden of the facility where she is detained. *See* 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."). Petitioner's habeas claims challenge her current physical confinement. "[C]ore habeas petitioners challenging their present physical confinement [must] name their immediate custodian, the warden of the facility where they are detained,

² 8 U.S.C. § 1231(b)(3) provides, with certain exceptions, that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

1 as the respondent to their petition.” *Doe v. Garland*, 109 F. 4th 1188, 1197 (9th Cir. 2024)
2 (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)). “[T]he Court cannot exercise
3 jurisdiction over [Petitioner’s] Petition so long as [s]he fails to name as respondent the
4 warden of the detention facility where [s]he is being detained.” *Mukhamadiev v. U.S. Dep’t*
5 *of Homeland Security*, No. 25-cv-1017-DMS-MSB, 2025 WL 1208913, at *3 (S.D. Cal.
6 Apr. 25, 2025). As Petitioner has failed to name her immediate custodian, the petition
7 should be dismissed for lack of jurisdiction.

8 **B. Petitioner is Lawfully Detained**

9 Authority to detain noncitizens who are subject to a final order of removal is governed
10 by 8 U.S.C. § 1231(a). *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the
11 alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683
12 (2001).

13 Petitioner is subject to a final, executable order of removal, which means that she
14 has no right to remain in the United States. She has a temporary right not to be repatriated
15 to Azerbaijan, but she has no right not to be resettled in a third country. ICE has long-
16 standing authority to remove noncitizens and resettle them in third countries where removal
17 to the country designated in the final order is “impracticable, inadvisable, or impossible.”
18 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for
19 designation). Accordingly, noncitizens like Petitioner, who have received protection
20 against removal to the designated country (either withholding of removal under 8 U.S.C. §
21 1231(b)(3) or CAT protection), may be removed and resettled in third countries.

22 Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall
23 remove the noncitizen to any of the following countries:

- 24 (i) The country from which the alien was admitted to the United States.
- 25 (ii) The country in which is located the foreign port from which the
26 alien left for the United States or for a foreign territory contiguous to the
27 United States.
- 28 (iii) A country in which the alien resided before the alien entered the
country from which the alien entered the United States.
- (iv) The country in which the alien was born.

1 (v) The country that had sovereignty over the alien's birthplace when
the alien was born.

2 (vi) The country in which the alien's birthplace is located when the alien
is ordered removed.

3 (vii) If impracticable, inadvisable, or impossible to remove the alien to
4 each country described in a previous clause of this subparagraph, another
country whose government will accept the alien into that country.

5 *Id.*

6 Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen
7 to a country of designation or an alternative country in subparagraph (D), the Secretary may,
8 in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i)
9 through (E)(vi).

10 An alien ordered removed must be detained for 90 days pending the government's
11 efforts to secure the alien's removal through negotiations with foreign governments. *See* 8
12 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day
13 removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The statute "limits
14 an alien's post-removal detention to a period reasonably necessary to bring about the alien's
15 removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533
16 U.S. at 689. The Supreme Court has held that a six-month period of post-removal detention
17 constitutes a "presumptively reasonable period of detention." *Id.* at 683; *see also Clark v.*
18 *Martinez*, 543 U.S. 371, 377 (2005) ("[T]he presumptive period during which the detention
19 of an alien is reasonably necessary to effectuate his removal is six months..."); *Lema v. INS*,
20 341 F.3d 853, 856 (9th Cir. 2003).

21 Release is not mandated after the expiration of the six-month period unless "there is
22 no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533
23 U.S. at 701; *see also Clark*, 543 U.S. at 377. The Supreme Court limited the statute, allowing
24 post-removal detention "to a period reasonably necessary to bring about that alien's removal
25 from the United States." *Zadvydas*, 533 U.S. at 689. "[O]nce removal is no longer
26 foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. Ultimately,
27 "an alien can be held in confinement until it has been determined that there is no significant
28 likelihood of removal in the reasonably foreseeable future [(“SLRRFF”)]." *Id.*

1 The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the alien to show,
2 after a detention period of six months, that there is ‘good reason to believe that there is no
3 significant likelihood of removal in the reasonably foreseeable future.’” *Pelich v. INS*, 329
4 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*,
5 298 F.3d 832, 840 (9th Cir. 2003). The alien must make such a showing to shift the burden
6 to the government.

7 [O]nce the alien provides good reason to believe that there is no significant
8 likelihood of removal in the reasonably foreseeable future, the Government
9 must respond with evidence sufficient to rebut the showing. And for the
10 detention to remain reasonable, as the period of prior post-removal
confinement grows, what counts as the “reasonably foreseeable future”
conversely would have to shrink.

11 *Zadvydas*, 533 U.S. at 701.

12 Petitioner’s case is premature as the six-month presumptively reasonable removal
13 period will not end until approximately January 28, 2026. *See Ali v. Barlow*, 446 F. Supp.
14 2d 604, 609-610 (E.D. Va. 2006) (finding habeas petition was unripe for review where
15 *Zadvydas* six-month period had not expired; dismissing petition without prejudice);
16 *Gonzales v. Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012)
17 (same); *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19,
18 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At
19 no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention
20 before the end of the presumptively reasonable six-month period.”).

21 Even if the removal period had extended beyond six months, Petitioner cannot show
22 that there is no significant likelihood of removal in the reasonably foreseeable future. ICE
23 is in the process of obtaining travel documents from a third country pursuant to 8 U.S.C. §
24 1231(b)(2)(E), so it is premature for Petitioner to seek administrative or judicial review of
25 that process. If ICE obtains travel documents for resettlement in a third country, Petitioner
26 will have an opportunity to seek to reopen her removal proceedings. *See* 8 U.S.C. §
27 1229a(c)(7) (Motions to reopen); 8 C.F.R. § 1003.23(b) (“Reopening or reconsideration
28

1 before the immigration court”). Movants can also seek an emergency stay of removal. *See*
2 *generally* 8 C.F.R. §§ 1003.2(f), 1003.23(b)(v). Judicial review of that process will be
3 exclusive to the Ninth Circuit. *See* 8 U.S.C. § 1252(b)(6), (9). ICE is actively working to
4 effect Petitioner’s removal to a third country and her continued detention is not
5 unconstitutionally indefinite. On this record, Petitioner could not sustain her burden, and it
6 would be premature to reach that conclusion before permitting ICE an opportunity to
7 complete its diligent efforts to effect Petitioner’s removal.

8 To the extent Petitioner is challenging ICE’s decision to detain her for the purpose of
9 removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) (“Except as
10 provided in this section and *notwithstanding any other provision of law* (statutory or
11 nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and
12 sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or
13 claim by or on behalf of any alien arising from the decision or action by the Attorney
14 General to commence proceedings, adjudicate cases, or *execute removal orders* against any
15 alien under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-*
16 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to
17 focus special attention upon, and make special provision for, judicial review of the Attorney
18 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
19 execut[ing] removal orders”—which represent the initiation or prosecution of various stages
20 in the deportation process.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020)
21 (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims
22 stemming from the decision to arrest and detain an alien at the commencement of removal
23 proceedings are not within any court’s jurisdiction”).

24 **C. An Evidentiary Hearing is Not Needed**

25 Because the record shows that Petitioner is not entitled to habeas relief, there is no
26 need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474
27 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise precludes
28 habeas relief, a district court is not required to hold an evidentiary hearing.”).

1 **CONCLUSION**

2 For the reasons stated above, the Court should deny and dismiss the petition.

3
4 DATED: September 9, 2025

Respectfully submitted,

5 ADAM GORDON
6 United States Attorney

7 s/Erin M. Dimbleby
8 ERIN M. DIMBLEBY
Assistant United States Attorney

9 Attorneys for Respondents

1 ADAM GORDON
United States Attorney
2 ERIN M. DIMBLEBY
Assistant U.S. Attorney
3 California Bar No. 323359
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Tel: (619) 546-6987
6 Fax: (619) 546-7751
Email: Erin.Dimbleby@usdoj.gov

7 Attorneys for Respondents

8
9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 HAVVA KHALILOVA,

14 Petitioner,

15 v.

16 KENNETH C. SMITH; et al.,

17 Respondents.
18

Case No.: 25-cv-2140-JLS-DDL

TABLE OF EXHIBITS

19
20
21 Exhibits:

- 22 1. Form I-213, Record of Deportable/Inadmissible Alien, dated December 2, 2024
23 2. Order of the Immigration Judge, dated January 28, 2025
24 3. Notice to Appear, dated February 4, 2025
25 4. Order of the Immigration Judge, April 21, 2025
26 5. Order of the Immigration Judge, July 28, 2025
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HAVVA KHALILOVA,

Petitioner,

v.

KENNETH C. SMITH; et al.,

Respondents.

Case No.: 25-cv-2140-JLS-DDL

**DECLARATION OF DAVID
TOWNSEND**

I, David Townsend, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am a Deportation Officer (DO) with the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), in the Otay Mesa suboffice of the San Diego Field Office. I have been with ICE since 02/2023 and have held my position as a DO since 02/2023.

1 2. I am familiar with ICE policy and procedures governing the detention and
2 removal of aliens who come into ICE's custody. The following information is based on
3 my personal knowledge, as well as my review of government databases and
4 documentation relating to Petitioner Havva Khalilova (Petitioner).

5 3. Petitioner is a citizen and national of Azerbaijan. Petitioner entered the
6 United States unlawfully on December 1, 2024. She was not then in possession of any
7 valid entry documents and Customs and Border Protection (CBP) determined that she
8 was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I)
9 and placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1).

10 4. On December 1, 2024, Petitioner was detained by CBP and subsequently
11 transferred to ICE custody and detained at the Otay Mesa Detention Center.

12 5. On January 13, 2025, Petitioner was interviewed by a U.S. Citizenship and
13 Immigration Services asylum officer to determine whether she had a credible fear of
14 persecution or torture if removed to Azerbaijan. The interview resulted in a negative
15 determination.

16 6. On January 28, 2025, an immigration judge reviewed and vacated the
17 asylum officer's determination.

18 7. On February 4, 2025, a Notice to Appear was issued by DHS, charging
19 Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C.
20 § 1182(a)(7)(A)(i)(I).

21 8. Petitioner remained mandatorily detained in ICE custody under 8 U.S.C. §
22 1225(b)(1)(B)(ii).

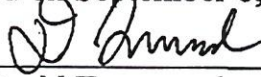
23 9. On July 28, 2025, an immigration judge ordered Petitioner removed to
24 Azerbaijan and granted her application for Withholding of Removal.

25 10. ERO is actively working to locate a third country for resettlement and to
26 effect Petitioner's removal to a third country. On August 21, 2025, ICE submitted
27 resettlement requests to Armenia, Hungary, and Canada. The Hungarian Consulate
28 General has responded that the request has been forwarded to the Hungarian Ministry

1 of Foreign Affairs and Trade. The Canadian Embassy has denied the resettlement
2 request.

3
4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct.

6 Executed on September 8, 2025, in Otay Mesa, California.

7 
8 _____
9 David Townsend
10 Deportation Officer
11 Enforcement and Removal Operations
12 U.S. Immigration and Customs Enforcement
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28