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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Joel Jeronimo Martin, Petitioner, v. The United States of America, *et al*, Respondent.	Case No. 2:26-cv-00388-CDS-NJK **Federal Respondents' Response to Amended Petition for Writ of Habeas Corpus, ECF No. 7**

Federal Respondents through undersigned counsel, hereby file their response to Petitioner's Amended Petition for Writ of Habeas Corpus, ECF No. 7. The petition should be denied because Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a) and does not violate his due process rights. In addition, his detention is not unconstitutionally prolonged under the Supreme Court Decision, but rather reasonable pursuant to the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) as the removal period has not even begun due to a stay of removal that remains in place. This response is supported by the following memorandum of points and authorities.

Respectfully submitted this 25th day of March 2026.

TODD BLANCHE
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/s/ Martin J. Mayer
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Memorandum of Points and Authorities

Petitioner Martin's detention pending removal is authorized under 8 U.S.C. § 1231(a)(5). Petitioner has a reinstated removal order making his removal order administratively final. Additionally, Petitioner has a negative finding of reasonable fear of return to Mexico, which denies the ability to pursue withholding proceedings. There is no relief available to the Petitioner at this stage. His detention is not unconstitutionally prolonged under the Supreme Court's decision in *Zadvydas*, 533 U.S. 678. Rather, the detention is "presumptively reasonable" under the Supreme Court's decision. *See id.* at 701. Notwithstanding this precedent, Petitioner claims his detention is under § 1226(a) rather than § 1231. This is legally incorrect, and the relief sought is not justified by any of the arguments presented in Petitioner's brief. Petitioner is not eligible for release until the removal period has lapsed, which it has not.

Petitioner is subject to a final removal order after a finding by an IJ that the Petitioner is removable to Mexico. See Negative Fear Finding, attached as **Exhibit A**. Petitioner was previously removed to Mexico pursuant to the final order of removal and returned to the United States where the removal order was reinstated. **Exhibit A**. Petitioner has submitted a Petition for Review with the Ninth Circuit Court of Appeals and on his motion the Court issued a stay of removal on April 21, 2025. Petitioner requested custody redetermination in June 2025 but withdrew the request. Following that, petitioner requested custody redetermination in August 2025, where the Immigration Judge denied to release the Petitioner stating "The Department of Homeland Security has established that the respondent is a danger to the community and a flight risk." **Exhibit B**. The Immigration Judge provides a deeper explanation in the bond memorandum, detailing criminal history, immigration history, and the denial of relief for the Petitioner. In her oral decision at the hearing, the Immigration Judge notes that she is not taking the domestic violence conviction into account because she does not know if it is the Petitioner. Petitioner filed an appeal with the BIA regarding his custody determination asserting that the criminal records presented to the Immigration Judge are of another person who is not the Petitioner. The BIA set a briefing schedule where Petitioner's brief was due on February 26, 2026. Petitioner did not file his brief on time per the briefing schedule, and the BIA has yet to render a decision on the appeal.

Petitioner now brings a petition for a writ of habeas corpus, seeking immediate release. But the Court does not have jurisdiction over the petition, because 8 U.S.C. § 1252 bars review of his claims. And even if the Court had jurisdiction, the claims fail on the merits. The procedures followed by DHS regarding Petitioner's detention complied with the INA and relevant regulations Contrary to Petitioner's arguments. Additionally, the Petitioner has a pending BIA appeal regarding his custody determination, which is the proper body to decide if the Immigration Judge erred in her findings. The period to brief the BIA has passed, resolution is forthcoming. The Court should dismiss the petition.

BACKGROUND

I. Petitioner's Immigration History

Petitioner is a 36-year-old alien from Mexico residing in this country, subject to final removal order. **Exhibits A**. Petitioner was previously removed to Mexico pursuant to the final order of removal and returned to the United States where the removal order was reinstated. Exhibit A. Petitioner has submitted a Petition for Review with the Ninth Circuit Court of Appeals and on his motion the Court issued a stay of removal on April 21, 2025. Petitioner requested custody redetermination in June 2025 but withdrew the request. Following that, petitioner requested custody redetermination in August 2025, where the Immigration Judge denied to release the Petitioner stating "The Department of Homeland Security has established that the respondent is a danger to the community and a flight risk." Exhibit B. The Immigration Judge provides a deeper explanation in the bond memorandum, detailing criminal history, immigration history, and the denial of relief for the Petitioner. Petitioner filed an appeal with the BIA regarding his custody determination asserting that the criminal records presented to the Immigration Judge are of another person who is not the Petitioner. The BIA set a briefing schedule where Petitioner's brief was due on February 26, 2026.

II. Relevant Statutory and Regulatory Background

A. Removal and Detention Under 8 U.S.C. § 1231(a)

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). And the mandatory removal period begins on the latest of three possible dates: (1) the date an order of removal becomes "administratively final," (2) the date of the final order of any court that entered a stay of removal, or (3) the date the alien is released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post removal period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how long detention during the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. And the Supreme Court further clarified that a six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this 6-month period, once the alien 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.*

Further, The Supreme Court held that §1231(a) applies to individuals who are removed and who then reenter without authorization and apply for withholding of removal based on a fear that they will be persecuted or tortured if returned to their countries of origin. *Johnson v. Guzman Chavez*,; *see also Johnson v. Arteaga-Martinez*. The issue presented in *Arteaga-Martinez* is whether § 1231(a)(6) requires the Government to offer detained noncitizens bond hearings, the Court held it does not.

B. Orders of Supervision

In the event the government does not further detain and instead releases the alien at the end of the 90-day mandatory removal period, the government must do so under conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that an alien who "does not leave or is not removed within the removal period … shall be subject to supervision"); *see also* 8 C.F.R. §§ 241.4(j); 241.5. Regulations promulgated pursuant to the INA require that conditions of supervised release include reporting to an immigration officer; making "efforts to obtain a travel document and assist[ing] the [government] in obtaining a travel document"; reporting for physical and mental examinations; obtaining advance approval of travel; and providing ICE with written notice of any address changes. *See* 8 C.F.R. § 241.5(a).

If the alien violates a condition of release, the government can revoke the order of supervision and return the alien to custody. *See* 8 C.F.R. § 241.4(l). In that scenario, the government must notify the alien of "the reasons for revocation," and "conduct an initial interview promptly" to give the alien "an opportunity to respond to the reasons for revocation stated in the notification." *See id.* § 241.4(l)(1). If the alien is not released after the initial interview, there is a subsequent review process, one which entails a records review and scheduling of an interview which ordinarily takes place within three months of the revocation of release. *Id.* § 241.4(l)(3). The final review includes an evaluation of any disputed facts, and a decision as to whether the facts as determined support revocation and further denial of release. *Id.* Thereafter, the government conducts annual custody reviews in accordance with 8 C.F.R. §§ 241.4(i), (j), and (k). *Id.*

C. Suspension of Removal Under 8 U.S.C. § 1231(a)(1)(C)

As noted above a separate basis for detention of aliens with final orders of removal is via an extension of the removal period in circumstances where the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8 U.S.C. § 1231(a)(1)(C). In such cases, the government must serve the alien a "Notice of Failure to Comply," which sets forth the relevant statutory provisions in play (8 U.S.C. §§ 1231(a)(1)(C), 1253(a)) and provides "an explanation of the necessary steps that the alien must take in order to comply with the statutory requirements." 8 C.F.R. § 241.4(g)(5)(ii). The government must also advise the alien that the "Notice of Failure to Comply shall have the effect of extending the removal period as provided by law, if the removal period has not yet expired," and that the government is not required to complete any scheduled custody reviews under 8 C.F.R. § 241.4 until the alien has "demonstrated compliance with the statutory obligations." *Id.* § 241.4(g)(5)(iii).

LEGAL ARGUMENT

I. The Court Lacks Jurisdiction Over the Petition.

A. The INA and REAL ID Act Deprive This Court of Jurisdiction.

Federal courts are courts of limited jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Id.* (citations omitted); *see also Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Courts created by statute can have no jurisdiction but such as statute confers."); *cf. Romano v. Warden, FCI Fairton*, No. 23-2919 (CPO), 2025 WL 1189877, at *8 (D.N.J. Apr. 24, 2025) (observing, in prison habeas context, "[f]ederal courts are courts of limited jurisdiction," and where "Congress has committed a decision to the unreviewable discretion of the BOP . . . § 2241 offers no basis for judicial intervention.").

Through this habeas action, Petitioner challenges his present detention for purposes of executing a final order of removal. Congress, however, divested this Court from hearing such claims by way of the INA and the REAL ID Act. *See* 8 U.S.C. §§ 1252(b)(9), (g). For these reasons, as discussed below, the Court lacks jurisdiction over Petitioner's claims challenging the revocation of supervised release and re-detention pending removal.

At the outset, 8 U.S.C. § 1252(g), as amended by the REAL ID Act, deprives courts of jurisdiction—including habeas corpus jurisdiction—over reviewing "any" claim "arising from the decision or action" to (among other things) "execute removal orders." Put differently, this provision bars habeas review in federal district court of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).[1] That provision bars Petitioner's claims here.

Indeed, every circuit court of appeals to address the issue has held that § 1252(g) eliminates subject-matter jurisdiction over habeas challenges (including those raising constitutional claims) to an arrest or detention for the purpose of executing a final removal order. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding court lacked jurisdiction over habeas challenge to the exercise of discretion to execute removal order); *see also Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) ("The plain text of § 1252(g) covers decisions about *whether* and *when* to execute a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021) (holding § 1252(g) barred review of decision to execute removal order while individual sought administrative relief); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Hamama v. Adducci*, 912 F.3d 869, 874

[1] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3).

(6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review.")[2]

The Third Circuit's decision in *Tazu* is instructive. There, the petitioner sought to challenge the government's decision to re-detain him for prompt removal, claiming that a revocation of supervised release without notice and a revocation interview allegedly violated agency rules and due process. *See Tazu*, 975 F.3d at 298. The Third Circuit found that claim barred by 8 U.S.C. § 1252(g) because it sought to challenge "a key part of executing" a removal order: a "short re-detention for removal." *Id.* As the Third Circuit recognized, re-detaining the petitioner was "simply the enforcement mechanism the [government] picked to execute [the petitioner's] removal order." *Id.* at 298-99. And § 1252(g) "funnels review" of such claims away from the district courts, and to the courts of appeals through a petition for review. *Id.* at 299. Here, as in *Tazu*, Petitioner challenges the enforcement mechanism utilized to execute his final order of removal: the decision to detain him pending removal. Here, as in *Tazu*, this Court lacks jurisdiction over such claims under 8 U.S.C. § 1252(g).

Petitioner's challenges regarding the execution of his final removal order are also foreclosed under 8 U.S.C. § 1252(b)(9). In passing the REAL ID Act, Congress prescribed a single path for Article III review of removal orders: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5); *see also Verde-Rodriguez v. Atty. Gen.*, 734 F.3d 198, 201 (3d Cir. 2013). And as the REAL ID Act further provides. "[j]udicial review of *all questions of law and fact*, including interpretation of constitutional and statutory

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[2] Relatedly, § 1252(g) bars district court review of challenges to the method by which DHS chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal — and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process."); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest Saadulloev on April 4, 2023, clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g).").

provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added); *see also*, *Johnson v. Arteaga-Martinez*, at 584-585 (Thomas, J., concurring). (" Because [Petitioner] does not seek review of a final removal order or otherwise invoke §1252, and because his claim 'aris[es] from' his removal proceedings, I would vacate and remand with instructions to dismiss for lack of jurisdiction.")

Read in conjunction, 8 U.S.C. § 1252(b)(9) and § 1252(a)(5) express Congress's intent to funnel judicial review of every aspect of removal proceedings into a petition for review filed in the courts of appeals. *See Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (recognizing that these provisions "clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)" via petition for review). These provisions sweep more broadly than § 1252(g). *See Reno*, 525 U.S. at 483. Indeed, pursuant to § 1252(b)(9) ad 1252(a)(5), "most claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020); *see also Reno*, 525 U.S. at 483 (describing § 1252(b)(9) as an "unmistakable zipper clause," and defining a zipper clause as one "that says 'no judicial review in deportation cases unless this section provides judicial review.'").

Here, 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction over Petitioner's claims. Once again, the Third Circuit's *Tazu* decision guides the analysis. In another part of that decision, the Third Circuit held that the same claims concerning a revocation of supervised release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9) because the claims arose from actions taken to execute the petitioner's removal. 975 F.3d at 299. Here, as in *Tazu*, Petitioner's claims arise directly out of actions taken to remove him, and the questions raised by those claims are intertwined with his removal. *See id.* Another recent decision from the District Court in *Khalil v. Joyce*, No. 25-1963 (MEF), ECF No. 214, 2025 WL 1232369 (D.N.J. Apr. 29, 2025), does not cast doubt on the conclusion that 8 U.S.C. §§ 1252(g) and 1252(b)(9) apply here. In that case, unlike here, the petitioner had not been issued a final removal order, and so the District Court concluded that § 1252(b)(9) did not apply because that provision "takes away federal district court jurisdiction only after an order of removal has been entered," and "none ha[d] been entered" in that case. *Id.* at *60. As to § 1252(g), the District Court found that it was inapplicable because the provision "pulls away jurisdiction over specific actions" by DHS—"not over actions by the Secretary of State, like [the] determination" at issue, "and not over across-the-board policies, like the one alleged" in that case. *Id.* Here, Petitioner does not challenge any action by the Secretary of State, nor does he attack any alleged broad-based policies. The reasoning behind the recent jurisdictional decision in *Khalil* does not affect the conclusion here.

That conclusion, for the reasons above, is that Petitioner's claims fall within the INA's jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9), so the Court should dismiss the petition for lack of jurisdiction.[3]

B. Petitioner's Detention is Lawful.

There is no dispute that Petitioner is subject to a final order of removal. As a result, the "post-order" detention provisions of 8 U.S.C. § 1231 govern. Those provisions require a 90-day mandatory removal period during which immigration officials must detain the alien while attempting to secure his or her removal. *See* 8 U.S.C. §§ 1231(a)(1), (2); *see Zadvydas*, 533 U.S. at 683 ("After entry of a final removal order and during the 90-day removal period quo . . . aliens must be held in custody." (internal citation omitted)). Congress, however, provided for the detention of aliens following the 90-day removal period in certain

[3] Respondents are also aware of another out-of-district case *Patel v. Barr*, No. CV 20-3856, 2020 WL 6888250, at *3 (E.D. Pa. Nov. 24, 2020), but respectfully submit that the case is also distinguishable. In *Patel*, the district court held that the jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(b)(9) and 1252(g) did not apply, notwithstanding *Tazu*, because while Tazu had a pending petition for review and had been granted a stay of removal, Patel had neither. Because, in *Patel*, the Board of Immigration Appeals delayed ruling on Patel's various motions, the court found that Patel "ha[d] no access to judicial review." *Id.* at *3.

circumstances. As discussed, the Supreme Court has interpreted 8 U.S.C. § 1231(a)(6) to allow for post-order detention for a period "reasonably necessary to bring about the alien's removal from the United States. *Zadvydas*, 533 U.S. at 689. And the Court held that detention for a period of six months is "presumptively reasonable." *Id.* After that six-month period, the alien bears the burden of showing that "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* If the alien successfully makes that showing, "the Government must respond with evidence sufficient to rebut that showing." *Id.* In addition, the 90-day removal period may be tolled and the alien "may remain in detention during such extended period if [he or she] fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

Here, Petitioner has not even begun the 90-day removal period despite his detention for approximately 13 months due to his pending PFR before the Ninth Circuit Court of Appeals, and the court's issuance of a stay of removal. Petitioner is subject to a final order of removal that was administratively final. § 1231(a)(B)(ii) tolls the removal period from even beginning when (1) the removal order is judicially reviewed and (2) the court issues a stay of removal; the beginning date of the removal period will begin on the date of the court's final order. The detention is lawful under § 1231 to effectuate the final removal order.

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CONCLUSION

For the foregoing reasons, the Court should dismiss the Amended Petition for Writ of Habeas Corpus.

Respectfully submitted this 25th day of March 2026.

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