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

12 MODOU SARR,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security; *et*
al.,

17 Respondents.
18

Case No.: 26-cv-2206-CAB-JLB

**RESPONSE IN OPPOSITION TO
WRIT FOR HABEAS CORPUS**

19 **I. Introduction**

20 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the
21 reasons set forth below, the Court should deny Petitioner's requests for relief and
22 dismiss the petition.

23 **II. Factual and Procedural Background**

24 Petitioner is a citizen and national of Gambia. On July 17, 2010, Petitioner was
25 admitted into the United States on a visitor basis and eventually became a conditional
26 lawful permanent resident in 2015. *See* Declaration of Adrian Gonzalez ("Gonzalez
27
28

Decl.”) at ¶ 3; Exhibit 1 (2018 Form I-213).¹ On February 17, 2017, Petitioner’s conditional resident status terminated. *Id.* On September 24, 2018, Petitioner was encountered by Immigration and Customs Enforcement (ICE). *See* Exhibit 1. Petitioner was subsequently issued a Notice to Appear for removal proceedings (NTA) and released from immigration custody. *See* Exhibit 2 (Notice to Appear). On August 13, 2019, Petitioner failed to appear at his removal proceedings and was ordered removed to Gambia in his absentia. *See* Exhibit 3 (Decision of the Immigration Judge); Gonzalez Decl. at ¶ 4.

On November 21, 2025, ICE re-detained Petitioner following Petitioner’s arrest for driving under the influence in Salt Lake City, Utah. *See* Gonzalez Decl. at ¶ 5; Exhibit 4 (2025 Form I-213). On December 28, 2025, Petitioner filed a motion to reopen the removal order thereby staying Petitioner’s removal to Gambia. Gonzalez Decl. at ¶ 6. On January 16, 2026, an immigration judge denied Petitioner’s motion, which lifted the stay on his removal. *Id.* at ¶ 7; Exhibit 5. ICE promptly sent a travel document request to the Gambian embassy in order to effectuate Petitioner’s removal to Gambia. *See* Gonzalez Decl. at ¶ 10. On February 23, 2026, the Gambian Consulate interviewed Petitioner. *Id.* Once Petitioner’s travel document is obtained, ICE will arrange for his removal to Gambia. *Id.* at ¶¶ 11-13.

III. Argument

A. Petitioner’s Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass’n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner’s claims are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any

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

1 decision to commence or adjudicate removal proceedings or execute removal orders.
2 *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and *notwithstanding any*
3 *other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or*
4 *any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court
5 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising
6 from the decision or action by the Attorney General to commence proceedings,
7 adjudicate cases, or *execute removal orders* against any alien under this chapter.”)
8 (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483
9 (1999) (“There was good reason for Congress to focus special attention upon, and make
10 special provision for, judicial review of the Attorney General’s discrete acts of
11 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—
12 which represent the initiation or prosecution of various stages in the deportation
13 process.”). In other words, § 1252(g) removes district court jurisdiction over “three
14 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
15 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
16 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
17 by the Attorney General to . . . execute removal orders,” over which Congress has
18 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should
19 deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C.
20 § 1252.

21 **B. Petitioner is Lawfully Detained**

22 Alternatively, Petitioner’s petition should be denied because he is properly
23 detained under 8 U.S.C. § 1231(a). Respondents are working expeditiously to acquire
24 the necessary travel document in order to effectuate Petitioner’s removal to Gambia.
25 Petitioner cannot meet his burden of rebutting the presumptively reasonable period of
26 detention.

27 An alien ordered removed must be detained for 90 days pending the
28 government’s efforts to secure the alien’s removal through negotiations with foreign

1 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
2 during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683
3 (2001). The statute “limits an alien’s post-removal detention to a period reasonably
4 necessary to bring about the alien’s removal from the United States” and does not permit
5 “indefinite detention.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a
6 six-month period of post-removal detention constitutes a “presumptively reasonable
7 period of detention.” *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005)
8 (“[T]he presumptive period during which the detention of an alien is reasonably
9 necessary to effectuate his removal is six months...”); *Lema v. INS*, 341 F.3d 853, 856
10 (9th Cir. 2003). Release is not mandated after the expiration of the six-month period
11 unless “there is no significant likelihood of removal in the reasonably foreseeable
12 future.” *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

13 In *Zadvydas*, the Supreme Court held that “the habeas court must ask whether the
14 detention in question exceeds a period reasonably necessary to secure removal. It should
15 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
16 *assuring the alien’s presence at the moment of removal.*” *Zadvydas v. Davis*, 533 U.S.
17 at 699 (emphasis added). The Court in *Zadvydas* therefore recognized that detention is
18 presumptively reasonable pending efforts to obtain travel documents, because the
19 noncitizen’s assistance is needed to obtain the travel documents, and a noncitizen who
20 is subject to an imminent, executable warrant of removal becomes a significant flight
21 risk, especially if he or she is aware that it is imminent.

22 The Court in *Zadvydas* also held that the detention could exceed six months:
23 “This 6-month presumption, of course, does not mean that every alien not removed must
24 be released after six months. To the contrary, an alien may be held in confinement until
25 it has been determined that there is no significant likelihood of removal in the
26 reasonably foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien
27 provides good reason to believe that there is no significant likelihood of removal in the
28 reasonably foreseeable future, the Government must respond with evidence sufficient

1 to rebut that showing and that the noncitizen has the initial burden of proving that
2 removal is not significantly likely.” *Id.*

3 In recent cases involving re-detention to effect removal, courts have recognized
4 that ICE has a presumptively reasonable period of six months to obtain travel
5 documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D.
6 Md. July 22, 2025) (“The government is entitled to its six-month presumptive period
7 before Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”);
8 *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D.
9 Fla. July 17, 2025) (“The Court finds that the Petition is premature because Petitioner
10 has not been detained for more than six months. Petitioner has been in detention since
11 May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.”);
12 *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July
13 8, 2025) (“Because Grigorian has been in custody for fifteen days, his detention does
14 not violate the implicit six-month period read into the post-removal-period detention
15 statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL
16 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV
17 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) (“Nhean’s 90-day
18 removal period began to run on October 12, 2010, when his removal order became final,
19 and he was released after 91 days of custody to supervised release on January 11, 2011.
20 Nhean was transferred back into ICE custody on August 26, 2016. Nhean’s detention
21 was presumptively reasonable for an additional 90 days (six months in total)”), *cited in*
22 *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19,
23 2018); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn.
24 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
25 the release based on changed circumstances, “the revocation would merely restart the
26 90-day removal period, not necessarily the presumptively reasonable six-month
27 detention period under *Zadvydas*”). Here, the period of presumptive reasonableness to
28 effect Petitioner’s removal has not reached six months.

1 Apart from the fact that the period of presumptive reasonableness has not yet
2 elapsed, Petitioner cannot show that there is no significant likelihood of removal in the
3 reasonably foreseeable future. Petitioner's claim alleging that Respondents view
4 Gambia as "at risk of noncompliance" in repatriating its citizens is contradicted by the
5 record. *See* ECF No. 1 at 11. On February 23, 2026, the Gambian Consulate cooperated
6 with ICE and interviewed Petitioner in order to obtain his travel document. Gonzalez
7 Decl. at ¶ 10. Once ICE receives the travel document it will begin efforts to secure a
8 flight itinerary for Petitioner. ICE is not aware of any reason that would prevent or delay
9 Petitioner's removal to Gambia. Gonzalez Decl. at ¶ 14.

10 Further, Petitioner's case does not implicate the impossibility of repatriation in
11 *Zadvydas*. *Zadvydas* was stateless, and both countries to which he potentially could
12 have been deported (the country where he was born and the country of which his parents
13 were citizens) refused to accept him because he was not a citizen. *See id.*, at 684. The
14 deportation of the other petitioner in *Zadvydas*, Ma, was prevented, because there was
15 no repatriation agreement at that time between the United States and Cambodia. *Id.* at
16 685. Here, Petitioner is a Gambian citizen and the Gambian Consulate is cooperating
17 with ICE to obtain his travel document. ICE is actively working to effect Petitioner's
18 removal to Gambia and his continued detention is not unconstitutionally indefinite.

19 On this record, Petitioner cannot sustain his burden, and it would be premature
20 to reach that conclusion before permitting ICE an opportunity to complete its diligent
21 efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in
22 negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's
23 detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB)
24 slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month
25 detention does not violate *Zadvydas* given respondent's production of evidence showing
26 governments' negotiations are in progress and there is reason to believe that removal is
27 likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No.
28 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this

1 stage in the litigation does not support a finding that there is no significant likelihood
2 of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez*
3 *v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition
4 because "Respondents have set forth evidence that demonstrates progress and the
5 reasons for the delay in Petitioner's removal").

6 **IV. CONCLUSION**

7 For the foregoing reasons, Respondents respectfully request that the Court
8 dismiss the petition.

9 DATED: May 8, 2026

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