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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TOFAN AHMADZAI,

Petitioner,

v.

MARKWAYNE MULLIN, *et al.*,

Respondents.

Case No.: 26-cv-2641-JAO-MSB

**RESPONDENTS' RETURN TO
HABEAS PETITION**

I. Introduction

Petitioner has filed a habeas petition seeking release from immigration custody. However, because Petitioner's claims are direct and indirect challenges to his expedited removal proceedings, jurisdiction over his claims is barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(e), and § 1252(g). Moreover, as Petitioner is inadmissible, his claims lack merit. Respondents respectfully request that the Court deny Petitioner's requests for relief.

II. Factual Background¹

Petitioner is a native and citizen of Afghanistan. Exhibit (Ex.) 1 (I-213). On June 5, 2025, Petitioner unlawfully entered the United States near Tecate, California. Ex. 1. Shortly thereafter, Petitioner was apprehended and determined to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid entry document. Ex. 1. Petitioner was placed into ICE custody and, on June 6, 2025, Petitioner was served with a Notice and Order of Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(1). Declaration of Edgar Olvera (Olvera Decl.) at ¶ 7. On July 13, 2025, Petitioner received a negative Convention Against Torture finding. Olvera Decl. at ¶ 9. On August 18, 2025, an asylum officer rendered a negative credible fear finding. *Id.* at ¶ 13. An immigration affirmed the negative credible fear finding on November 10, 2025. *Id.* at ¶ 14.

ICE is seeking to expeditiously remove Petitioner to Afghanistan pursuant to the Order of Expedited Removal. ICE has prepared and sent the required travel authorization letter to the Taliban's consulate in Doha, Qatar on January 15, 2026. *Id.* at ¶¶ 17-19. Once the Taliban consulate provides authorization, ICE will process Petitioner for removal via a commercial flight to Afghanistan. *Id.* at ¶ 22.

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

III. Argument

ICE's authority to detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2). The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*." (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

Even after the period of presumptive reasonableness has run, release is not required under *Zadvydas* unless "there is *no* significant likelihood of removal in the

1 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
2 Supreme Court instructed, “the habeas court must ask whether the detention in question
3 exceeds a period reasonably necessary to secure removal. It should measure
4 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
5 *alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added). In so holding,
6 the Supreme Court recognized that detention is presumptively reasonable pending
7 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
8 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
9 executable warrant of removal becomes a significant flight risk, especially if he or she
10 is aware that it is imminent.

11 The Supreme Court also instructed that detention could exceed six months: “This
12 6-month presumption, of course, does not mean that every alien not removed must be
13 released after six months. To the contrary, an alien may be held in confinement until it
14 has been determined that there is no significant likelihood of removal in the reasonably
15 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
16 reason to believe that there is no significant likelihood of removal in the reasonably
17 foreseeable future, the Government must respond with evidence sufficient to rebut that
18 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
19 alien to show, after a detention period of six months, that there is ‘good reason to believe
20 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
21 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
22 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

23 Here, Petitioner’s case is premature as the six-month presumptively reasonable
24 removal period will not end until approximately May 10, 2026. *See, e.g., Khalilova v.*
25 *Smith*, No. 25-cv-2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025) (finding
26 habeas petition was unripe for review where *Zadvydas* six-month period had not
27 expired; dismissing petition without prejudice); *Muradyan v. Warden*, No. 26-cv-63-
28 CAB-AHG, 2026 WL 184206 (S.D. Cal. Jan. 23, 2026) (same); *Ali v. Barlow*, 446 F.

1 Supp. 2d 604, 609-610 (E.D. Va. 2006) (same); *Gonzales v. Naranjo*, No. EDCV 12-
2 1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*,
3 No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see*
4 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did the
5 *Zadvydas* Court preclude a noncitizen from challenging their detention before the end
6 of the presumptively reasonable six-month period.”).

7 Even if the removal period had extended beyond six months, Petitioner cannot
8 show that there is no significant likelihood of removal in the reasonably foreseeable
9 future. ICE ERO has Petitioner’s Afghanistan passport and has requested authorization
10 from the Taliban for authorization to fly Petitioner on a commercial flight to
11 Afghanistan. Olvera Decl. at ¶¶ 17-19. This alone demonstrates that Petitioner will be
12 removed in the reasonably foreseeable future. Thus, Petitioner not only fails to meet his
13 burden, but Respondents have affirmatively shown that there is a significant likelihood
14 of Petitioner’s removal to Afghanistan in the reasonably foreseeable future. *Id.* at ¶ 22.

15 To the extent Petitioner is challenging ICE’s decision to detain his for the purpose
16 of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) (“Except
17 as provided in this section and *notwithstanding any other provision of law* (statutory or
18 nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision,*
19 *and sections 1361 and 1651 of such title,* no court shall have jurisdiction to hear any
20 cause or claim by or on behalf of any alien arising from the decision or action by the
21 Attorney General to commence proceedings, adjudicate cases, or *execute removal*
22 *orders* against any alien under this chapter.”) (emphasis added); *see also Reno v. Am.-*
23 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason
24 for Congress to focus special attention upon, and make special provision for, judicial
25 review of the Attorney General’s discrete acts of “commenc[ing] proceedings,
26 adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation
27 or prosecution of various stages in the deportation process.”); *Limpin v. United States*,
28 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8

1 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an
2 alien at the commencement of removal proceedings are not within any court’s
3 jurisdiction”).

4 In any event, Petitioner has been detained less than six months since issuance of
5 the expedited removal order. Thus his detention is presumptively reasonable. ICE has
6 made progress and is awaiting only authorization from Afghanistan to arrange a
7 removal flight.

8 Because the record shows that Petitioner is not entitled to habeas relief, there is
9 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.
10 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise
11 precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).

12 **IV. CONCLUSION**

13 For the foregoing reasons, Respondents respectfully request that the Court deny
14 the Petitioner’s request for relief.

15 DATED: May 5, 2026

16 Respectfully submitted,

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19 s/ Michael D. Wallace
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