JEFFREY P. CARLIN, SBN 227539
ALEX THEOFANIS, SBN 292651
ALVARO MONTENEGRO, SBN 343587
ALSTON & BIRD LLP
350 South Grand Avenue, 51st Floor
Los Angeles, CA 90071
Telephone: 213-576-1000
Facsimile: 213-576-1100
Email: jeff.carlin@alston.com
Email: alex.theofanis@alston.com
Email: alvaro.montenegro@alston.com

Attorneys for Petitioner
TAKHIR RUSTAMOVICH SABIROV

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TAKHIR RUSTAMOVICH SABIROV, Petitioner, v. CHRISTOPHER J. LAROSE, et al., Respondents.	Case No. 26-cv-03213-RFL-AHG **PETITIONER'S SUPPLEMENTAL BRIEF**

Petitioner Takhir Rustamovich Sabirov respectfully submits this Supplemental Brief in response to the Court's Order Requesting Supplemental Briefing, dated June 11, 2026. Each of the three enumerated questions in the Court's order is addressed in turn below.

I. What were Respondents referring to when stating "the stay"? Has the BIA granted Petitioner's motion to stay?

On May 19, 2026, Petitioner filed an Emergency Motion to Reopen and Request for Stay of Removal with the Board of Immigration Appeals (BIA) based on his proven statelessness and other extraordinary circumstances. **Exhibit A**, Emergency Motion to Reopen and Request for Stay of Removal. Petitioner's motion before the BIA remains pending. No ruling has been issued, and briefing was completed on June 5, 2026. Any government efforts to remove Petitioner before a full and final resolution of the BIA proceeding would be inappropriate as further discussed below.

Respondents' reference to "the stay" is unclear. To the extent Respondents intended to refer to the requested stay before the BIA, Petitioner's motion to reopen remains pending and raises substantial issues, including his newly affirmed statelessness, such that removal prior to the BIA's adjudication would be premature and would undermine the administrative process. Notably, Respondents themselves withdrew their Motion to Lift the Prohibition of Transfer when Respondents' counsel was "informed that Petitioner has filed a motion to reopen and a motion for stay with the Board of Immigration Appeals (BIA)." That representation confirms that Petitioner's pending BIA proceedings bear directly on the propriety and timing of any removal, regardless of the precise source of any "stay," and reinforces that Petitioner should not be removed while those proceedings are adjudicated.

To the extent Respondents instead intended to refer to the stay arising from this Court's adoption of Chief Judge Order No. 144, that Order provides that, "[t]o

preserve the Court's jurisdiction pending a ruling on the Petition, Respondents shall not transfer Petitioner outside the Southern District of California unless the Court orders otherwise." Dkt. 3. Under that Order, Respondents may not take steps to effectuate Petitioner's removal from this District unless and until the Court orders otherwise, and any such efforts would necessarily require prior relief from that stay.

II. How long will the BIA likely take to adjudicate Petitioner's pending motion(s)? How long would an appeal of those motion(s) likely take? Would ICE also stop all removal efforts pending any appeal?

1. Likely Timeline for BIA Adjudication of the Motion to Reopen

According to published legal sources, the estimated timeline for resolution of a motion to reopen before the BIA is between three to 18 months. *See How Long Does a Motion to Reopen an Immigration Case Take?*, LEGALCLARITY (Apr. 6, 2026), https://legalclarity.org/how-long-does-a-motion-to-reopen-an-immigration-case-take/ ("With current court backlogs, a realistic range is roughly three to six months from filing to decision . . . ."); *How Long Does It Take for the BIA to Make a Decision?*, LEGAL KNOWLEDGE BASE (Mar. 24, 2025), https://legalknowledgebase.com/how-long-does-it-take-for-the-bia-to-make-a-decision ("The BIA states that it generally seeks to adjudicate cases in no more than 180 days, however appeals can take between 8-18 months . . . ."); *Motions to Reopen in Immigration Court: Deadlines, Requirements, and How to File*, CHARLES INTERNATIONAL LAW (Nov. 24, 2025), https://www.charlesinternationallaw.com/motions-to-reopen (stating that to decide a motion to reopen, "the BIA often takes 6–18 months, depending on docket backlog and case complexity").

Cases involving detainees and those marked for emergency consideration—like Petitioner's—are given priority by the BIA, which could result in quicker resolution. *See* EXEC. OFF. FOR IMMIGR. REV., PM 20-07: CASE MANAGEMENT AND DOCKETING PRACTICES (Jan. 31, 2020), https://www.justice.gov/eoir/page/file/

1242501/dl (confirming EOIR's "longstanding policy of prioritizing the timely completion of cases involving detained aliens"); EXEC. OFF. FOR IMMIGR. REV., FACT SHEET: BIA EMERGENCY STAY REQUESTS, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (March 2018), https://www.justice.gov/eoir/page/file/1043831/dl?inline.

However, this priority designation does not guarantee expeditious resolution, especially given the unprecedented backlog in the immigration courts and the BIA's limited personnel. The current immigration enforcement environment has created circumstances beyond any party's control that contribute to uncertain and often delayed processing times. Accordingly, Petitioner cannot predict with certainty when the BIA will adjudicate his motion.

2. Likely Timeline for an Appeal to the Circuit Court

Should the BIA deny Petitioner's motion to reopen, Petitioner intends to file a Petition for Review with the Eleventh Circuit Court of Appeals. Although the Eleventh Circuit's rules do not provide categorical priority for detained petitions for review, courts of appeals routinely expedite consideration of emergency motions where removal is imminent. *See, e.g.*, *How to File a Petition for Review*, at 7, AM. IMMIGR. COUNCIL (Nov. 2015), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/how_to_file_a_petition_for_review_2015_update.pdf (explaining that removal may occur absent a stay and that a motion is required to prevent removal). Nevertheless, the practical reality is that only a limited number of judges handle the full volume of immigration appeals, which constrains the speed at which any petition for review can be resolved.

In practice, courts often resolve threshold stay motions within days or weeks and may dispose of certain petitions on an accelerated basis within several weeks. *See, e.g.*, *Perez-Velazquez v. U.S. Att'y Gen.*, No. 22-10759 (11th Cir. Mar. 11, 2022) (petition and stay motion filed Mar. 11, 2022; stay ruling issued Mar. 20, 2022; appeal dismissed Apr. 15, 2022); *Romero Santana v. U.S. Att'y Gen.*, No. 26-11398

(11th Cir. Apr. 24, 2026) (stay motion filed May 4, 2026; temporary stay granted May 5, 2026; stay denied May 7, 2026); *Kilko v. U.S. Att'y Gen.*, No. 26-10178 (11th Cir. Jan. 20, 2026) (emergency stay motion filed and temporarily granted Jan. 30, 2026). By contrast, where a petition proceeds beyond that initial stage, the appellate process extends for months, and often over a year, as reflected by standard briefing schedules that set initial merits briefing several months after filings. *See, e.g.*, *Moreno-Villanueva v. U.S. Att'y Gen.*, No. 26-10841 (11th Cir. Mar. 16, 2026) (denying stay Apr. 24, 2026 and setting deadline for opening brief on July 20, 2026); *Ceide v. U.S. Att'y Gen.*, No. 25-12909 (11th Cir. Aug. 25, 2025) (petition filed Aug. 25, 2025; opening brief scheduled for June 29, 2026). Indeed, courts have recognized that the full appellate process, including review of a BIA decision and any subsequent petition for review, may take up to two years or longer. *See Banda v. Nielsen*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019), *report and recommendation adopted in Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019) (finding that appeal of removal order with the BIA and review in the Ninth Circuit may take up to two years or longer). As such, Petitioner estimates that the appellate process would take several weeks at minimum, and likely significantly longer.

The pendency of any appeal in this case weighs in favor of finding that detention would become unreasonable. *See id.* ("Petitioner only recently filed his appeal of the IJ's removal order with the BIA. If the BIA affirms, petitioner will have the opportunity to seek review in the Ninth Circuit. This process may take up to two years or longer. This factor favors granting petitioner a bond hearing."). Where, as here, Petitioner's ability to pursue appellate review would necessarily extend for months—if not years—he should not be subject to continued detention absent a showing that he poses a flight risk or a danger to the community. At a minimum, therefore, if the Court declines to order Petitioner's release outright, a

bond hearing would be appropriate. Such a hearing would require the government to carry that burden, a showing it cannot make on this record, as Petitioner has complied with all immigration requirements for more than 14 years, including consistent check-ins and monitoring, and voluntarily presented for his most recent appointment where he was detained. Under these circumstances, the government cannot justify continued detention, and Petitioner would be entitled to release while his BIA proceedings remain pending.

3. Whether ICE Would Stop Removal Efforts Pending Any Appeal

Petitioner submits that ICE should halt all removal efforts pending resolution of any appeal to the Circuit Court. Courts routinely recognize that removal during the pendency of judicial review "poses a risk of mooting" the appeal, depriving the court of jurisdiction, and denying petitioners the right to have their claims resolved on the merits. *Poghosyan v. Wolf*, Case No. 5:20-CV-02295-ODW (AFM), 2020 WL 7347858, at *3 (C.D. Cal. Nov. 6, 2020) (concluding that "[r]emoval now, while his appeal and motion to reopen remain pending, would effectively deny [Petitioner] his right to be heard"); *Primero Garcia v. Barr*, No. 20-cv-01389-NC, 2020 WL 1139660, at *4 (N.D. Cal. Mar. 9, 2020) (finding "a real risk that immediate removal would moot [Petitioner]'s motion" because it is unlikely that he could continue to litigate his motion to reopen from a country where he was attacked twice). That concern is particularly acute here, where Petitioner's pending motion to reopen before the BIA raises substantial issues, including his statelessness, and he intends to seek further review if necessary. Maintaining the status quo by suspending removal efforts would ensure that the appellate process can run its course and that any relief granted will not be rendered ineffectual. *See Gbotoe v. Jennings*, No. C 17-06819 WHA, 2017 WL 6039713, at *4 (N.D. Cal. Dec. 6, 2017) (finding that removal "before [Petitioner] has had an opportunity to present his claims, will prejudice his day in court"); *Primero Garcia*, 2020 WL 1139660 at *4 (finding it

"untenable" that petitioner could continue to litigate his motion to reopen if removed to a country where he faced violence). Under these circumstances, continued removal efforts would be inconsistent with preserving judicial review, and ICE should therefore refrain from pursuing removal during the pendency of any appeal.

III. When considering claims under *Zadvydas*, this Court considers "the delays in the removal proceedings caused by [the petitioner] and the government." *Mendoza Gonzaga v. Larose*, No. 26-CV-02941-RFL, 2026 WL 1450402, at *2 (S.D. Cal. May 21, 2026). Under these circumstances, how should this factor be weighed?

When considering claims under *Zadvydas*, this Court considers "the delays in the removal proceedings caused by [the petitioner] and the government." *Mendoza Gonzaga v. Larose*, No. 26-CV-02941-RFL, 2026 WL 1450402, at *2 (S.D. Cal. May 21, 2026) (applying the three-factor test articulated in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022)).

Here, Petitioner's motion to reopen and request for stay do not constitute a "delay," because he is entitled to raise legitimate defenses to removal, which he has done with diligence and urgency by expeditiously bringing his habeas petition and BIA motion as soon as he was arrested and learned that his Order of Supervision ("OSUP") was revoked. *See Mendoza,* 2026 WL 1450402 at *2 (*quoting Lopez*, 631 F. Supp. 3d at 881) ("Petitioner is entitled to raise legitimate defenses to removal . . . and such challenges to his removal cannot undermine his claim that detention has become unreasonable." *Id.* at *2)). Further, Mr. Sabirov's motion to reopen raises a legitimate legal defense that the BIA has not yet had the opportunity to consider: his proven statelessness as a new fact and extraordinary circumstance. Pursuing that defense does not constitute "delay," and Petitioner has not caused any delay in any of these proceedings. He has not requested continuances or engaged in dilatory tactics of any kind.

If anything, any delay is attributable to the government. For more than a decade, both the United States and Uzbekistan treated Mr. Sabirov as effectively non-removable, repeatedly informing him that he could not be deported because he was not recognized as a citizen of any country. Dkt. 1-4 at ¶ 34. The government's sudden change in posture—detaining Mr. Sabirov without warning on May 14, 2026 after nearly 15 years of full compliance with his OSUP—does not erase the decade of inaction that preceded it. Moreover, the unprecedented surge in immigration enforcement actions and resulting backlog across the immigration court system has further strained resources and contributed to delays that are entirely outside Petitioner's control.

Under these circumstances, continued detention is unreasonable not only because removal remains uncertain and, at a minimum, potentially prolonged, but also because the practical consequences of even short-term detention are particularly severe. Mr. Sabirov was suddenly detained despite nearly 15 years of full compliance with his OSUP and without any indication that removal is imminent. Even a brief period of release would allow him to address urgent, time-sensitive matters that cannot be resolved while detained, including assisting his United States citizen wife in securing housing she can afford without his income, communicating with his long-term employer regarding his employment status, and arranging his financial affairs. These are not abstract inconveniences; they are immediate, concrete consequences of continued detention in a case where removal is neither imminent nor reasonably foreseeable. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 167 (W.D.N.Y. 2025) (finding a right to an orderly departure) (citing *Ragbir v. Sessions*, 2018 WL 623557, at *3 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019) (holding that "[c]onstitutional principles of due process and the avoidance of unnecessary cruelty here allow and provide for an orderly departure")). This reality

underscores why continued detention during the pendency of BIA proceedings and any appeal is unreasonable under *Zadvydas*—it imposes significant, avoidable harm while serving no meaningful removal purpose.

Mr. Sabirov's compliance history demonstrates beyond question that he is not a flight risk. Since his release on an OSUP in January 2012, he attended every check-in over a period of nearly 15 years without incident. Dkt. 1-4 at ¶¶ 29, 34, 38. He kept his contact information updated, cooperated with all ICE requirements, and voluntarily presented at his May 14, 2026 check-in. *Id.* at ¶¶ 31–32. This extraordinary record of compliance spans more than a decade and establishes that Mr. Sabirov poses no risk of flight and can be safely released pending resolution of his BIA proceedings.

Finally, Respondents' own conduct demonstrates that they could have afforded Mr. Sabirov the opportunity for an orderly departure but deliberately chose not to. On May 12, 2026, when Respondents decided to detain Mr. Sabirov, they contacted him and directed him to appear at the ICE office on May 14, 2026. Dkt. 1-4 at ¶ 31. Respondents could have given Mr. Sabirov notice at that time that he would be detained, which would have afforded him at least two days to put his affairs in order. Instead, Respondents intentionally concealed the purpose of the check-in from a man who had been wearing an ankle monitor for seven months and who presented no evidence of being a flight risk. *Id.* at ¶¶ 30–32. This deliberate choice to deny Mr. Sabirov even minimal notice underscores the fundamental unfairness of his detention and reinforces that any delay in the removal process and resulting harm is attributable to the government's own conduct and therefore weighs in Petitioner's favor under the *Zadvydas* framework.

For these reasons, the delay factor under *Lopez* weighs in Petitioner's favor, or at minimum is neutral. Petitioner has acted diligently at every stage, while any delay in the removal process stems from the government's longstanding treatment

of Mr. Sabirov as non-removable, the absence of a viable removal pathway, and the practical realities of ongoing administrative and judicial proceedings. Combined with other relevant factors—the length of detention which cumulatively exceeds eight months and the uncertain and potentially lengthy duration of future detention while BIA proceedings and any subsequent appeal remain pending—the totality of the circumstances demonstrates that Mr. Sabirov's continued detention has become unreasonable. This Court should grant the petition and order Petitioner's immediate release.

Date: June 15, 2026

Respectfully submitted,

/s/ Jeffrey P. Carlin
Jeffrey P. Carlin (CA Bar # 227539)
Alex Theofanis (CA Bar # 292651)
Alvaro Montenegro (CA Bar # 343587)
ALSTON & BIRD LLP
350 S Grand Ave
Los Angeles, CA 90071
Telephone: (213) 576-1000
Email: jeff.carlin@alston.com
Email: alex.theofanis@alston.com
Email: alvaro.montenegro@alston.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Alvaro Montenegro, certify and declare as follows:

I am over the age of 18 and not a party to this action.

My business address is 55 Second Street, Suite 2100, San Francisco, CA 94105.

On June 15, 2026, I caused a copy of **PETITIONER'S SUPPLEMENTAL BRIEF** to be served via the Court's CM/ECF system.

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct. Executed on June 15, 2026 at Los Angeles, California.

/s/ Alvaro Montenegro

Attorney for Petitioner

TAKHIR RUSTAMOVICH SABIROV