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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GABRIEL NETZ,

Petitioner,

v.

TODD BLANCHE, U.S. Attorney General, MARKWAYNE MULLIN, Secretary of DHS, TODD LYONS, Director of ICE, CHRISTOPHER LAROSE, Warden of Otay Mesa Detention Center,

Respondents.

Case No.: 26cv4028 TWR BJW

RESPONSE IN OPPOSITION TO PETITION

I. Introduction

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

II. Factual and Procedural Background

Petitioner is a native and citizen of the Republic of the Marshall Islands. Exhibit 1 (Notice to Appear) [1]. On April 23, 2026, the immigration judge (IJ) found the Petitioner removable as charged based upon his admissions and concession to the charge of removability. Exh. 2 (Order of the Immigration Judge). The IJ further denied all relief from removal and ordered the Petitioner removed to the Republic of the Marshall Islands. *Id.* Both parties reserved appeal but neither ultimately filed an appeal. *See* Exh 3 (Declaration of Elvira La Pierre, ¶ 3). Accordingly, on April 23, 2026 the removal order became final. 8 C.F.R. § 1241.1(c). Enforcement and Removal Operations (ERO) is actively attempting to effectuate the Petitioner's removal before the end of August 2026. Exh. 3, ¶ 4.

As of today's date, eighty-eight (88) days have elapsed since the removal order became final. Petitioner's removal is likely to occur within the reasonable foreseeable future. He has failed to meet his burden and this Court should order its dismissal.

III. Petitioner's Writ of Habeas Corpus Should Be Dismissed Post Haste and his Motion for Temporary Restraining Order Denied

On July 13, 2026, the Petitioner filed his pro se Petition for Writ of Habeas Corpus. ECF 1. He simultaneously filed a Motion for Temporary Restraining Order (TRO). ECF 2. As shown below, the Petition is without merit and should be dismissed immediately. Along with that dismissal, the TRO should be denied.

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

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

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B. Petitioner is Lawfully Detained

Alternatively, Petitioner's petition should be denied because he is properly detained under 8 U.S.C. § 1231(a). Petitioner's filings were filed post-removal order. Eighty-eight (88) days have expired since the removal order became final. Petitioner has not met his burden of rebutting the presumptively reasonable period of detention.

An alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The statute "limits an alien's post-removal 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 a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005) ("[T]he presumptive period during which the detention of an alien is reasonably necessary to effectuate his removal is six months..."); *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003). Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

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

The Court in *Zadvydas* also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *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 and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.*

In recent cases involving re-detention to effect removal, courts have recognized that ICE has a presumptively reasonable period of six months to obtain travel documents. *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. 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.*"); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July 8, 2025) ("Because Grigorian has been in custody for fifteen days, his detention does not violate the implicit six-month period read into the post-removal-period detention statute under *Zadvydas*."). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) ("Nhean's 90-day removal period began to run on October 12, 2010, when his removal order became final, and he was released after 91 days of custody to supervised release on January 11, 2011. Nhean was transferred back into ICE custody on August 26, 2016. Nhean's detention was presumptively reasonable for an additional 90 days (six months in total)"), *cited in*

Sied v. Nielsen, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *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*").

Apart from the fact that the period of presumptive reasonableness has not yet elapsed (only 88 days have passed since the order of removal became final), Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future when ICE has been actively working on his removal and anticipate removing him before August ends. Exh. 3.

Further, Petitioner's case does not implicate the impossibility of repatriation in *Zadvydas*. Zadvydas was stateless, and both countries to which he potentially could have been deported (the country where he was born and the country of which his parents were citizens) refused to accept him because he was not a citizen. *See id.*, at 684. The deportation of the other petitioner in *Zadvydas*, Ma, was prevented, because there was no repatriation agreement at that time between the United States and Cambodia. *Id.* at 685. Here, Petitioner is a citizen of the Marshall Islands and ICE is also able to remove Marshalles to their country. ICE is actively working to effectuate Petitioner's removal to his country by the end of August 2026, ergo his continued detention is not unconstitutionally indefinite.

On this record, Petitioner cannot sustain his burden, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its diligent efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing

governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

V. CONCLUSION

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

DATED: July 20, 2026

Respectfully submitted,

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