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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KAREM TADROS, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents*.	Hon. Evelyn Padin, U.S.D.J. Civil Action No. 2:25-cv-4108-EP

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

On the Brief:

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PRELIMINARY STATEMENT

Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6). And it is not unconstitutionally prolonged under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Rather, the detention is "presumptively reasonable" under the Supreme Court's decision. *See id.* at 701. Notwithstanding this precedent, Petitioner claims his detention from his May 7, 2025 arrest—which is approximately 23 days as of this filing and approximately 25 days in total—is unconstitutionally indefinite because "there is no third country in which Petitioner has a claim to legal immigration status, [meaning] there is no third country to which" Respondents can remove Petitioner without his subsequent removal to Egypt. *See* Petition for Writ of Habeas Corpus, ECF No. 1 ("Pet. Writ"), at ¶ 25.

Petitioner, however, has not carried his burden of demonstrating there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Instead, the evidence demonstrates that U.S. Immigration and Customs Enforcement ("ICE") continues in efforts to effectuate Petitioner's removal to an alternate country. Indeed, ICE has identified and is engaging the appropriate channels regarding outreach to a potential third country for approval of Petitioner's removal. As a result, it would be premature to conclude Petitioner's detention exceeds the time reasonably necessary to secure his removal or that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. Furthermore, Petitioner's assertions that ICE cannot effectuate his removal are speculative.

For these reasons, the Court should dismiss the Petition.

BACKGROUND

I. Petitioner's Immigration and Criminal History

Petitioner Karem Tadros is a native and citizen of Egypt who was admitted into the United States on March 17, 1989. *See* Pet. Writ, ECF No. 1 at ¶ 17; ECF No. 1-2. On September 11, 1998, Petitioner's status was adjusted to derivative asylee. ECF No. 1-2. On August 18, 2006, Petitioner was convicted of a "drug trafficking" offense as defined in section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(B) ("INA"), when he was convicted by the Superior Court of New Jersey, Bergen County, for the offense of manufacturing, distributing, and dispensing oxycodone in violation of New Jersey Statutes Annotated sections 2C:35-5A(1) and 5B(5). *Id.*

In a December 10, 2008 decision, the Immigration Judge denied Petitioner's applications for adjustment of status, for asylum, and for withholding of removal under the INA because of his conviction for an aggravated felony and particularly serious crime.[1] *Id.* at 1-1, 1-2. The Immigration Judge granted Petitioner's application for deferral of removal under the Convention Against Torture ("CAT"). *Id.* On April 7, 2009, the Board of Immigration Appeals ("Board") dismissed the Department of Homeland Security's ("DHS") appeal of that decision, making the

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[1] The April 7, 2009 Decision of the Board of Immigration Appeals, cited below, appears to improperly refer to the Immigration Judge's decision as a December 11, 2008 decision. *Compare* ECF No. 1-2 at 2 (referring to both a December 10, 2008 decision and a December 11, 2008 decision) *with* ECF No. 1-1 (reflecting the Immigration Judge signed the opinion on December 10, 2008). For clarity, we will refer to this decision as the December 10, 2008 decision.

removal order administratively final on April 7, 2009. *Id.*; May 30, 2025 Declaration of ICE Supervisory Detention and Deportation Officer, Alexander Cabezas ("Cabezas Dec."), attached as Exhibit 1. On April 9, 2009, ICE released Petitioner from custody to an Order of Supervision. Cabezas Dec. at ¶ 8.

On May 7, 2025, ICE officers arrested Petitioner at his home. Pet. Writ, ECF No. 1 at ¶ 20. Petitioner was taken into custody and housed at the Elizabeth Contract Detention Facility, where he remains at the present time. Pet. Writ, ECF No. 1 at ¶ 21; Cabezas Dec. at ¶ 9. On May 7, 2025, Petitioner was served the Form I-229(a) (Warning for Failure to Depart) and "Instruction Sheet to Detainee Regarding Requirement to Assist in Removal," as well as Form I-200 (Warrant for Arrest of Alien). Cabezas Dec. at 9. On May 21, 2025, Petitioner was served the Form I-229(a) (Warning for Failure to Depart) and "Instruction Sheet to Detainee Regarding Requirement to Assist in Removal," and Form I-215C (Record of Sworn Statement). Cabezas Dec. at ¶ 10. Based on Petitioner's final removal order, ICE represents that it has been making efforts to facilitate Petitioner's removal to a country other than Egypt. *Id.* at ¶ 11. ICE advises that it will provide Petitioner with notification as required by the preliminary injunction currently in effect in *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676 (D. Mass.). *Id.*

A. The Final Order of Removal and Mandatory Detention

On December 10, 2008, based on the finding that Petitioner was removable under 8 U.S.C. §§ 1227(a)(2)(B)(i) and 1227(a)(2)(A)(iii), an immigration judge ordered Petitioner's removal from the United States, while granting deferral of removal to Egypt. *See* Pet. Writ, ECF Nos. 1-1, 1-2 ("Order of the Immigration Judge"). On April 7, 2009, the BIA dismissed the DHS's appeal of the immigration judge's decision and the order of removal became administratively final. Two days later, on April 9, 2009, DHS released Petitioner from custody to an Order of Supervision. On April 9, 2009, two days after Petitioner's final administrative removal order and prior to the expiration of the 90-day removal period under 8 U.S.C. § 1231(a)(1)(A), DHS released Petitioner from custody subject to an Order of Supervision. *See* Cabezas Dec. at ¶ 8.

B. Procedural History

Petitioner filed this habeas petition on May 10, 2025, approximately three days after his detention. Pet. Writ, ECF No. 1. The petition asserts five claims: (1) Habeas Corpus (¶¶ 27-29); (2) Violation of the CAT (¶¶ 30-33); (3) Procedural Due Process, in violation of the Fifth Amendment (¶¶ 34-37); (4) Substantive Due Process, in violation of the Fifth Amendment (¶¶ 38-39); and Violation of 8 U.S.C. § 1231(a) / *Zadvydas v. Davis*, 533 U.S. 678 (2001). On May 20, 2025, the Court entered an Order to Answer by May 27, 2025. ECF No. 2. On May 27, 2025, with Petitioner's counsel's consent, Respondents requested an extension of the order to answer deadline until May 30, 2025, which the Court granted. ECF Nos. 5, 6. Respondents submit this memorandum of law in response to the Petition.

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 v. Davis*, 533 U.S. 678, 689 (2001). 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.*

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 a 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).

D. Removal to Third Country

As a general matter, aliens ordered removed "may designate one country to which [he or she] wants to be removed," and DHS "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or her designated country, including if "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien "shall" be removed to his or her country of nationality or citizenship, unless the country "is not willing to accept" the alien." *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv).

Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). In addition, DHS "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of [his or her] race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

LEGAL ARGUMENT

I. THE COURT SHOULD DISMISS THE HABEAS PETITION

A. This Court Lacks Jurisdiction Over the Petition

1. 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 the present detention. Congress, however, divested this Court from hearing such claims by way of the INA. *See* 8 U.S.C. §§ 1252(b)(9), (g). For these reasons, as discussed below, the Court lacks jurisdiction over Petitioner's claim challenging this present detention because he has a final order of 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).[2] That provision bars Petitioner's claims here.

Indeed, every circuit court of appeals to address the issue—including the Third Circuit—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 Tazu v. Atty. Gen.*, 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."); *see also 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); *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., ICE*, 988 F.3d 1268, 1274

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[2] 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).

(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 (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.").[3]

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 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

[3] Relatedly, § 1252(g) bars district court review of challenges to the method by which DHS chooses to commence removal proceedings. *See Alvarez v. ICE*, 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).").

section." 8 U.S.C. § 1252(b)(9) (emphasis added). 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 AADC*, 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. DHS*, 950 F.3d 177, 184 (3d Cir. 2020); *see also AADC*, 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.

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 (*Khalil*). *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. *Id.*

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.

B. Petitioner's Detention is Lawful

There is no dispute that Petitioner is subject to a final order of removal. *See* Pet. Writ ¶ 18, ECF Nos. 1, 1-2, 1-3. 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. 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 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 was detained for two days out of the 90-day removal period until his release on an order of supervision on April 9, 2009. He now challenges his present detention, which began on May 7, 2025, when ICE revoked Petitioner's supervised release. *See* Pet. Writ, ECF No. 1 at ¶ 20. That detention is lawful and presumptively reasonable under *Zadvydas*. To hold otherwise, Petitioner would have to demonstrate that he has been in (1) "post-removal order detention in excess of six months," and there is (2) "evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Jaime F. v. Barr*, No. 19-20706 (ES), 2020 WL 2316437, at *5 (D.N.J. May 11, 2020) (quotation omitted); *see also, e.g.*, *Di Wang v. Carbone*, Civ. No. 05-2386 (JAP), 2005 WL 2656677 at *3 (D.N.J. Oct. 17, 2005). Petitioner makes neither showing.

1. Petitioner's *Zadvydas* Claim Is Premature

At the outset, Petitioner's *Zadvydas* claim is premature because he has been detained on a final order of removal for less than the "presumptively reasonable" six-month period. *See* 533 U.S. at 701. Based on a straightforward application of *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained "for less than six months must be dismissed as premature." *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) ("To state a claim under *Zadvydas*, the presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal.").

In this case, Petitioner was initially detained for two days out of the 90-day removal period. He was then on supervised release until his detention on May 7, 2025. Thus, at the time of this filing, on May 30, 2025, he had been detained pursuant to the final order of removal for just over 23 days. And to date, he has been detained for approximately 25 days. The Court should dismiss without prejudice as premature because Petitioner has not been detained beyond the six-month period set forth in *Zadvydas*.

2. Petitioner Cannot Establish There Is No Significant Likelihood of his Removal in the Reasonably Foreseeable Future

Even assuming it was not premature, Petitioner's writ fails for an additional reason: Petitioner cannot demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701 (explaining alien challenging detention beyond six-month period bears burden of showing there is no significant likelihood of removal in reasonably foreseeable future).

"Numerous courts in this District have held that a detainee's failure to cooperate in obtaining travel documents precludes a finding that his or her removal is not reasonably foreseeable." *Ugarte v. Green*, No. 17-1436 (SRC), 2017 WL 6376498, at *3 (D.N.J. Dec. 13, 2017) (collecting cases); *see also, e.g.*, *Conceicao v. Holder*, No. 12–4668, 2013 WL 1121373, at *3 (D.N.J. Mar.13, 2013) ("[W]here Petitioner is refusing to sign the necessary travel documents, he has failed to cooperate in his removal and has failed, in this Court, to establish that there is no likelihood of his removal in the reasonably foreseeable future."); *Camara v. Gonzales*, No. 06–1568, 2007 WL 4322949, at *4 (D.N.J. Dec. 6, 2007) (finding petitioner did not state constitutional claim under *Zadvydas* due to failure to cooperate with obtaining necessary travel documentation). Here, Petitioner received a final order of removal on April 7, 2009. Pet. ¶¶ 2, 31. But he does not allege he made any attempt to cooperate in his removal in the more than fifteen years since then. He does not allege that he made any effort to obtain travel documents, such as by submitting applications for travel documents to embassies or consulates as was required by the Order of Supervision and the INA. That failure to cooperate in removal forecloses Petitioner's *Zadvydas* claim.

For similar reasons, Petitioner's detention is also lawful under 8 U.S.C. § 1231(a)(1)(C), which provides for suspension of the removal period and detention "beyond a period of 90 days" if an alien "fails or refuses to make timely application in good faith for travel or other documents necessary to [his or her] departure." "Courts have long held that [8 U.S.C. § 1231(a)(1)(C)] not only stands for the proposition that the removal period may be extended where an alien is the impediment to his [or her] own removal, but also that such an alien cannot demand his [or her] release under *Zadvydas* as he [or she] has the keys to his [or her] freedom in his [or her] pocket and could likely effectuate his [or her] removal by providing the necessary information to the appropriate officials." *Bailey v. Lynch*, No. 16-2600 (JLL), 2016 WL 5791407, at *3 (D.N.J. Oct. 3, 2016). Here, again, Petitioner does not allege that he made any effort to assist in his removal.[4] Indeed, the failure to provide copies of travel document requests from alternate countries was the basis for the revocation of his supervision release. *See* Notice of Revocation.

In the end, the INA imposes an affirmative duty on an alien "to make timely application in good faith for travel and other documents necessary to [his or her] departure," and prescribes criminal penalties for willful failure to do so. *See* 8 U.S.C. § 1253(a)(1). Courts examining prolonged detention claims have thus considered whether a petitioner has acted in a manner as to hinder or prevent removal such that

[4] Whether ICE has formally served Petitioner with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) does not foreclose application of 8 U.S.C. § 1231(a)(1)(C) here. Indeed, the governing regulations specifically provide that "[t]he fact that [DHS] does not provide a Notice of Failure to Comply within the 90-day removal period, to an alien who has failed to comply with the requirements of [8 U.S.C. § 1231(a)(1)(C)] shall not have the effect of excusing the alien's conduct." 8 C.F.R. § 241.4(g)(5)(iv); *see also Ling v. Hendricks*, No. 13-7610 (KM), 2014 WL 1310294, at *6 n. 2 (D.N.J. Mar. 27, 2014). Accordingly, courts have found the removal period extended under 8 U.S.C. § 1231(a)(1)(C) even where the government has not yet technically served a Notice of Failure to Comply. *See id.*; *see also de Souza Neto v. Smith*, No. 17-11979, 2017 WL 6337464, at *1 n. 2 (D. Mass. Oct. 16, 2017) ("Although [petitioner] alleges that ICE did not provide her with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) that her removal period has been extended, the lack of notice 'shall not have the effect of excusing the alien's conduct.' 8 C.F.R. § 241.4(g)(5)(iv)").

the six-month presumptively reasonable period under *Zadvydas* should be tolled. Where an alien "takes actions delaying his/her removal (e.g. by refusing to cooperate with the ICE's removal efforts)," he or she "cannot demand his/her release upon expiration of these six months." *Xiangquan v. Holder*, No. 12-7650 (MAS), 2013 WL 1750145, at *3 (D.N.J. Apr. 23, 2013). "The reason is self-evident:" when an alien does not demonstrate that he or she has made good faith efforts to assist with securing travel documents necessary to effectuate his or her removal, the alien, once detained, "cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock." *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). Accordingly, "*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal." *U.S. ex rel. Kovalev v. Ashcroft*, 71 F. App'x 919, 924 (3d Cir. 2003) (quoting *Pelich*, 329 F.3d at 1060). Such is the case here.

For the reasons above, assuming the Court finds habeas jurisdiction, the Court should dismiss the *Zadvydas* claim on the merits.[5]

C. The Due Process Claims Also Fail

Petitioner challenges ICE's revocation of supervised release for the purpose of executing the final removal order to an alternate country (i.e., a country other than Egypt, where Petitioner has withholding of removal). The Court should dismiss these counts because Petitioner cannot state a due process violation as a matter of law.

[5] The *Zadvydas* claim is not subject to the jurisdiction-stripping provisions discussed above. *See Tazu*, 975 F.3d at 299. Accordingly, Respondents seek dismissal of Count I for lack of habeas jurisdiction and on the merits, but not based on § 1252.

Petitioner's due process claim based on the absence of any present indication of supposed third country removal efforts fails because any such claim is premature. A procedural due process claim has two elements: (1) notice, and (2) an opportunity to be heard. *See Matthews*, 424 U.S. at 333. And here, Petitioner has not demonstrated he has or will be deprived of these requirements when it comes to his removal to an alternate third country.

Although DHS recently re-detained Petitioner subject to the final order of removal, and in preparation for removal to a third country, there is no allegation that Petitioner's removal has yet been scheduled. Because DHS is still in the process of investigating a third country of removal, the claim challenging lack of "notice" of such removal is not ripe for judicial review. *See Texas v. United States*, 523 U.S. 296, 300 (1998) (a "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (cleaned up)).[6]

More still, Petitioner is a member of a Rule 23(b)(2) class of plaintiffs subject to a nationwide preliminary injunction in *D.V.D. v. D.H.S., et al.*, No. 25-10676 (D. Mass.). In that case, the District of Massachusetts issued a nationwide preliminary

[6] Petitioner, moreover, has an opportunity to file a motion to reopen and assert claims for relief and protection from removal to additional countries. Petitioner does not allege that he has sought to do so. This, too, counsels in favor of dismissing any putative due process claim related to third country removal. *See Wilson v. MVM, Inc.*, 475 F.3d 166, 176 (3d Cir. 2007) ("Before bringing claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate." (quotation and citation omitted)).

injunction ordering DHS to abide by the following requirements with respect to third country removals of aliens including Petitioner:

> "[P]rior to removing any alien to a third country, i.e., any country not explicitly provided for on the alien's order of removal, Defendants must: (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for [Convention Against Torture] protections; (3) move to reopen the proceedings if the alien demonstrates 'reasonable fear;' and (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal."

See D.V.D., No. 25-10676, 2025 WL 1142968, at *24 (D. Mass. Apr. 18, 2025), *appeal filed*, No. 25-1393 (1st Cir. Apr. 22, 2025). Petitioner's membership in the *D.V.D.* class, which the court certified under Rule 23(b)(2), is not waivable. *See Barnes v. American Tobacco Co.*, 161 F.3d 127, 142-43 (3d Cir. 1998) (recognizing that in a Rule 23(b)(2) "class action, unnamed members are bound by the action without the opportunity to opt out."). The *D.V.D.* case remains pending before the U.S. Court of Appeals for the First Circuit. And that case deals specifically with the portion of the Petition related to third country removal. Accordingly, the Court should dismiss the portion of the Petition dealing with potential third country removal for the reasons above (and because Petitioner is already litigating that claim in another forum); or, in the alternative, Respondents respectfully request that the Court issue a partial stay as to that component of the case only pending the *D.V.D.* litigation. *See Munaf v. Green*, 553 U.S. 674, 693 (2008) ("prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power"); *see also*

Cicero v. Olgiati, 410 F. Supp. 1080, 1099 (S.D.N.Y. 1976) ("Consistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure.").[7] Additionally, ICE stated its intention of providing notification as required by the Court in the *D.V.D.* class action. *See* Cabezas Dec. ¶ 11.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Petition.

Respectfully submitted,

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[7] Multiple courts of appeals have upheld dismissals of a case if there is a parallel class action raising the same or substantially similar issues. *See, e.g.*, *Crawford v. Bell*, 599 F.2d 890, 892–93 (9th Cir. 1979) (holding that a district court may dismiss "those portions of [the] complaint which duplicate the [class action's] allegations and prayer for relief"); *McNeil v. Guthrie,* 945 F.2d 1163, 1165–66 (10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Horns v. Whalen,* 922 F.2d 835, 835 & n.2 (4th Cir. 1991); *Gillespie v. Crawford,* 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class action has been certified, "[s]eparate individual suits may not be maintained for equitable relief"); *Bennett v. Blanchard,* 802 F.2d 456, 456 (6th Cir. 1986) (affirming dismissal of a case when the plaintiff was a member in a parallel class action); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (since class members generally "cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified").