

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-02144-ECT-JFD

SARAIL ARCHILLA,

Petitioner,

RESPONSE TO PETITION

v.

PAM BONDI, *U.S. Attorney General*; LISA MONACO, KRISTI NOEM, *Secretary of Department of Homeland Security*; PETER BERG, *Field Office Director for the Minneapolis Field Office*; WARDEN, *of Freeborn County Detention Center*,

Respondents.

INTRODUCTION

Federal Respondents¹ respectfully submit this Response to the Petition for Writ of Habeas Corpus filed in this case. ECF No. 1 (“Petition”). Petitioner Sarail Archilla (“Petitioner”) is subject to a final order of removal from the United States but was released during the COVID-19 Pandemic under an Order of Supervision. On May 6, 2025, that Order of Supervision was revoked, and Petitioner was arrested and taken into government custody. He is now lawfully detained pursuant to 8 U.S.C. § 1231 pending his removal. Petitioner admits that he is subject to a final order of removal, *see* Petition ¶

¹ Federal Respondents are Pam Bondi, Lisa Monaco, Kristi Noem, and Peter Berg. Attorney General Bondi was automatically substituted for her predecessor, Former Acting Attorney General James McHenry, pursuant to Federal Rule of Civil Procedure 25(d). *See* Fed. R. Civ. P. 25(d). Petitioner named both Lisa Monaco and James McHenry as Attorney General and as Respondents, however Ms. Monaco was a Deputy Attorney General.

11, but argues that his detention is now unlawful because “having released Petitioner, the Government may not re-detain [him] without satisfying 8 C.F.R. § 241.13(i).” *Id.* at 1.

Contrary to his assertions, the government complied with that regulation, including by serving him with a Notice of Revocation of Release on May 6, 2025, indicating that due to changed circumstances there is “now a significant likelihood of [his] removal within the foreseeable future,”² and by conducting an informal interview that same day where he was afforded the opportunity to respond and provide evidence demonstrating that his removal is unlikely. Petitioner offered no such reasons or evidence at his informal interview, nor does the Petition now assert that there is not a significant likelihood of removal in the reasonably foreseeable future. Though Petitioner correctly argues that civil detention must be justified and not punitive, detention to facilitate removal has been long recognized as a legitimate governmental objective. As the Petition is meritless, Federal Respondents respectfully request that it be dismissed.

RELEVANT FACTUAL BACKGROUND

I. Petitioner’s Background & Criminal Activity

Petitioner is a foreign national who entered the United States on an unknown date without inspection or parole. *See* Declaration of JOHN D. LIGON (“Ligon Decl.”) ¶ 4. He claims to have been continuously present in the United States since 1981. Petition ¶ 12. Though he also claims to be native and citizen of Canada, *id.* ¶ 11, and to have been

² Declaration of Liles Repp (“Repp Decl.”) Exhibit C (“Notice”) at 1. Exhibits to the Repp Declaration are hereafter referred to simply as “Ex. __.” References to page numbers in within those exhibits are to page numbering on PACER rather than to internal pagination.

born in Scarbrough, Ontario to a Jamaican mother, Ligon Decl. ¶¶ 4-5, the Registrar General for that province has stated that there is no record of his birth in Ontario. *Id.* ¶ 12.

By early 2006, Petitioner had become involved in a cocaine distribution scheme in Massachusetts. On August 26, 2008, Petitioner was indicted by a Grand Jury in the District court of Massachusetts, and in July of 2010 he pled guilty to Conspiracy to Possess with Intent to Distribute/Distribution of Cocaine in violation of 21 U.S.C. § 846, and Possession with Intent to Distribute/Distribution of Cocaine in violation of 21 U.S.C. § 841(a)(1). *Id.* ¶ 6-7, *see* Ex. A at 1. His indictment indicates that his possession with intent to distribute charge “involved 500 grams or more of a mixture and substance containing cocaine” while the conspiracy charge “involved 5000 grams or more” *Id.* at 12, 15. Petitioner was sentenced to 144 months of imprisonment in the custody of the United States Bureau of Prisons followed by 84 months of supervised release. *Id.* at 2, 3.

II. Petitioner’s Immigration Detention

In early May of 2017, agents from the Savanna/Atlanta sub-office U.S. Immigration and Customs Enforcement (“ICE”)’s Enforcement and Removal Operations (“ERO”) encountered Petitioner while performing routine Institutional Hearing Program duties at the D Ray James Federal Correction Facility in Folkston, GA. Ligon Decl. ¶ 8.

On June 19, 2017, Petitioner was served a Notice of Intent to Issue a Final Order, Form I-851, charging removability under Section 237(A)(2)(A)(iii) of the Immigration and Nationality Act (“INA”), as amended, in that, at any time after admission, he had been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the INA, a law relating to the illicit trafficking in a controlled substance, as described in Section 102 of

the Controlled Substances Act, including a drug trafficking crime, as defined in Section 924c of Title 18, United States Code. *Id.* ¶ 9.

a. Petitioner's First Period of Immigration Detention

Upon his release from federal prison on July 26, 2017, ICE agents arrested Petitioner. Ligon Decl. ¶ 10; *see* Petition ¶ 14. On August 18, 2017, Petitioner was ordered removed from the United States. Ligon Decl. ¶ 11; *see* Ex. B. During his first period of immigration detention, ICE attempted but was unsuccessful in obtaining travel documents enabling Petitioner's removal, including because there was no record of his birth in Ontario, Canada and because at that time, the Consulate of Jamaica did not respond to ICE's request to issue a travel document for him. *See Ligon Decl.* ¶¶ 12-13; Petition ¶ 16.

On November 23, 2020, Petitioner was released from ICE custody on an Order of Supervision following custody review held pursuant to *Frailhat v. U.S. Immigr. & Customs Enft.*, Ligon Decl. ¶ 14, which, in light of the then-ongoing COVID-19 Pandemic, required ICE to review medical files and identify immigration detainees with certain health risk factors and to conduct individualized custody determinations. *See* 445 F. Supp. 3d 709, 719, 750 (C.D. Cal. 2020), *order clarified*, No. EDCV191546JGBSHKX, 2020 WL 6541994 (C.D. Cal. Oct. 7, 2020), and *rev'd and remanded*, 16 F.4th 613 (9th Cir. 2021). The preliminary injunction giving rise to Petitioner's Order of Supervision has since been reversed and remanded. *See Frailhat v. U.S. Immigr. & Customs Enft.*, 16 F.4th 613, 651 (9th Cir. 2021), and is no longer in effect. *See Frailhat v. U.S. Immigr. & Customs Enft.*, No. 519CV01546JGBSHK, 2022 WL 20212706, at *1 (C.D. Cal. Sept. 16, 2022).

Petitioner spent the period from November 23, 2020, to May 6, 2025, outside of

immigration custody and subject to an Order of Supervision. *See* Ligon Decl. ¶ 14, 19. During that time, Petitioner missed multiple mandatory biometric check-ins with ICE, including as recently as April 10, 2025. *Id.* ¶¶ 15-18.

b. Petitioner’s Present Immigration Detention

On May 6, 2025, ICE ERO in Saint Paul, Minnesota revoked Petitioner’s Order of Supervision and arrested him. *Id.* ¶ 19. The same day, he was served with a Notice of Revocation of Release stating that, “Due to changes in the circumstances of [his] case, there is now a significant likelihood of removal within the foreseeable future.” Notice; *see id.* (noting “ICE has determined there is a significant likelihood of removal in the reasonably foreseeable future in your case.”). The Notice also stated that, while Petitioner is to remain in ICE custody at this time, he would “promptly be afforded an informal interview at which [he] w[ould] be given an opportunity to respond to the reasons for revocation and to provide any evidence to demonstrate that [his] removal is unlikely.” *Id.*

Petitioner was afforded that Informal Interview that same day, on May 6, 2025. Ligon Decl. ¶ 21; *See* Ex. D (ALIEN INFORMAL INTERVIEW UPON REVOCATION OF ORDER OF SUPERVISION UNDER 8 C.F.R. § 241.4(l); 8 C.F.R. § 241.13(i)). At the interview, he did not provide a statement or any documents showing that his removal was unlikely, *see id.*, in fact the interview notes reflect that he “wants to go” *Id.*

Petitioner was not released following his informal interview and is currently detained in ICE custody at Freeborn County Adult Detention Center. *See* Petition ¶ 1. As the Notice reflects, he will next receive a notification of a new review, which will occur in August of 2025 “within approximately three months” of May 6, 2025, NOTICE, a period

which has not yet elapsed. In the interim, additional developments have further increased the likelihood of Petitioner's removal in the foreseeable future. "Electronic Nationality Verification is now available for Jamaica," and "Jamaica," is now cooperating with ICE to issue travel documents." Ligon Decl. ¶ 22. Additionally, a request has been made to the ERO Removal Management Division to seek a Jamaican birth certificate for Petitioner. *Id.* ¶ 23. Thus, the agency therefore currently believes that Petitioner's "removal is significantly likely in the reasonably foreseeable future." *Id.* ¶ 22.

III. Procedural History

Petitioner filed this present Petition on May 19, 2025, asserting four separate claims. *See* ECF No. 1. First, under the heading "STATUTORY VIOLATION," Petitioner argues that his detention violates the Due Process clause of the U.S. Constitution. *See* Petition ¶¶ 22-24. Though he does not specify a basis concerning the alleged violation, the cases he cites appear to indicate that he believes his detention is punitive or not reasonably related to a legitimate governmental objective. *See id.* ¶ 24. Second, Petitioner appears to assert a claim under the Administrative Procedures Act based on the purported absence of a notification of revocation and informal interview. *See id.* ¶¶ 25-26. The Petition's third and fourth claims seek a preliminary injunction enjoining respondents from re-detaining him without court approval and a Temporary Restraining Order for his immediate release from custody. *Id.* ¶¶ 27-32. On May 20, 2025, the Court ordered the Respondents to respond to the Petition by May 30, 2025, *see* ECF No. 2, precipitating this response.

ARGUMENT

I. Jurisdiction, Burden Of Proof, And Scope Of Review

28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. When doing so, the burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treaties of the United States in order to warrant relief. *See Skafrouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011).

Judicial review of immigration matters, including immigration detention, is also limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“[T]he power over aliens is of a political character and therefore subject only to narrow judicial review.”). The Supreme Court has “underscore[d] the limited scope of inquiry into immigration legislation,” and “repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

For aliens their challenging civil immigration detention in a habeas action, courts employ a narrow standard of review and exercise “the greatest caution” in evaluating constitutional claims that implicate those decisions.” *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976)). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.”); *Carlson v. Landon*, 342

U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”).

Here, Petitioner’s sole challenge is to his present immigration detention pending removal. *See, e.g.*, Petition at 1 (seeking immediate release from “unlawful detention”). Petitioner does not challenge his final order of removal, nor could he. Jurisdiction over a challenge to such an order lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal lies with the circuit court).

II. Legal and Statutory Authority for Detention

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). Through the Immigration and Nationality Act (“INA”), Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231.

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). However, once an alien is subject to an administratively final removal order, as Petitioner is here, detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt.

241. Once ordered removed an alien lacks a legal right to remain in the United States and, as the governing legal rules reflect, his or her liberty interest is reduced. Under Section 1231, “when an alien is ordered removed,” the Secretary of Homeland Security “shall detain the alien” “[d]uring the removal period.” 8 U.S.C. § 1231(a)(1)(A), (a)(2).³ The “removal period” is the period during which the U.S. Department of Homeland Security (“DHS”) begins to take steps to execute the alien’s final removal order. *See id.* § 1231(a)(1)(A)-(B). That period begins on the latest of three dates: (i) the “date the order of removal becomes administratively final”; (ii) “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order”; or (iii) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.* § 1231(a)(1)(B)(i)-(iii).

Although Section 1231 initially provides a 90-day period for the government to execute a final removal order, that period may be extended in some circumstances. For example, aliens removable as convicted of an aggravated felony pursuant to section 8 U.S.C. § 1227(a)(2), as Petitioner is here, *see* Ex. B, and those determined to be “a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period.” *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of period in certain circumstances). DHS also conducts periodic post-order custody reviews to determine whether an alien subject to a final removal order should continue to be detained

³ Although § 1231 and other provisions of the Immigration and Nationality Act refer to the “Attorney General,” under the Homeland Security Act of 2002 many of those references are now read to mean the Secretary of Homeland Security. *See Straker v. Jones*, 986 F. Supp. 2d 345, 351 (S.D.N.Y. 2013).

beyond the initial removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other aliens).

An alien held beyond the removal period may also seek release from DHS custody, by showing that “there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future.” 8 C.F.R. § 241.13(a). Beyond these statutory and regulatory mechanisms, the Supreme Court has held that an alien subject to a final removal order may file a habeas petition and seek release if he can show that his detention has become prolonged and that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

After the expiration of the removal period an alien may be released by DHS under an order of supervision. *See* 8 C.F.R. § 241.13. However, DHS may also revoke release in certain circumstances, including for removal. 8 C.F.R. § 1231.13(i)(2) (DHS “may revoke an alien’s release under this section and return the alien to custody if, on account of changed circumstances, the [DHS] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.”). Procedures for revocation are governed by the following section, 8 C.F.R § 1231.13(i)(3), and require that the alien:

be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3). Where an alien is not released following the informal interview, the provisions of Section 241.4 govern continued detention pending removal. *Id.* § (i)(2).

III. DHS Fully Complied with the Regulatory Requirements In Revoking Petitioner's Release.

To the extent Petitioner argues, under the APA⁴ or otherwise, that his detention does not comply with applicable regulatory requirements, that argument is incorrect. *See* Petition at 2 (“Petitioner challenges the lawfulness of his detention under 8 C.F.R. § 241.13” as he may not be re-detained “without satisfying 8 C.F.R. § 241.13(i)”; *id.* ¶ 25-26. Though Petitioner claims he “was not notified for the reasons for revocation of his release,” *id.* ¶ 26, or “given any reason for his detention,” *id.* ¶ 20, those assertions are belied by Declaration of Deportation Officer John D. Ligon, *see* Ligon Decl. ¶ 20, and by record itself, which includes the Notice of Revocation of Release and accompanying proof of service on Petitioner dated May 6, 2025. *See* NOTICE. Indeed, elsewhere in the

⁴ Though Petitioner cites to the APA, he fails to specify a “final agency action” he seeks to challenge, as is required for APA review. 5 U.S. Code § 704; *see Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61–62 (2004) (Where “no other statute provides a private right of action, the ‘agency action’ complained of must be ‘final agency action.’”) (citing 5 U.S.C. § 704). Petitioner has also arguably failed to exhaust the administrative remedies permitting him to challenge his detention. While “[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],” *Araujo- Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), exhaustion should be required here as a prudential matter, *accord Paz Nativi v. Shanahan*, No. 16 Civ. 8496 (JPO), 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) (“[B]efore immigration detention may be challenged in federal court. . . exhaustion is generally required as a prudential matter.” (collecting cases)); *see also Reiter v. Cooper*, 507 U.S. 258, 269 (1993) (“Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.”); *Mathena v. United States*, 577 F.3d 943, 946 (8th Cir. 2009); *Arroyo v. Fikes*, No. 21-CV-2489 (KMM/BRT), 2022 WL 2820405, at *2 (D. Minn. May 5, 2022).

Petition, Petitioner appears to allude to having received the Notice. *See* Petition ¶ 26 (arguing Petitioner should have had the “opportunity to respond to the reasons for revocation stated in the notification.”).

Nor does the Petition point to any problem with the Notice, which mirrored requirements set forth in the regulation. 8 C.F.R. § 241.13(i)(2) states that DHS “may revoke an alien’s release under this section and return the alien to custody if, *on account of changed circumstances, the [DHS] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.*” 8 C.F.R. § 1231.13(i)(2)⁵ (emphasis added). That is precisely what the Notice stated. *See* Notice (“Due to changes in the circumstances of your case, there is now a significant likelihood of removal within the foreseeable future.”); *id.* (“ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case.”).

Petitioner’s next assertion, that DHS “should have conducted an interview promptly after his return to service custody to afford [him] with an opportunity to respond to the reasons for revocation stated in the notification,” ignores that he *did* receive an informal interview as required by the 8 C.F.R. 241.13(i)(3), on May 6, 2025. *See* Ligon Decl. ¶ 21; Ex. D (signed statement comprising the record from the informal interview). Though it seems clear from the record that Petitioner failed to dispute the

⁵ Though not a basis stated in the Notice, Petitioner’s repeated failure to attend his required biometric appointments, *see* Ligon Decl. ¶¶ 15-18, would likely constitute an additional basis for revocation of his release under 8 C.F.R. § 241.13(i)(1), entitled “Violation of conditions of release.” *See* Petition ¶ 18 (describing weekly facial recognition reports as part of “detailed report orders of supervision”). It also belies his assertion that he “never violated any of the above conditions” *Id.* ¶ 19.

government's basis for revocation at his interview or to provide any evidence or information that would rebut the likelihood of his removal in the reasonably foreseeable future, *see* Ex. D, he was given the *opportunity* to do so, which is all the regulation requires. 8 C.F.R. 241.13(i)(3). Nor was advance notice of that informal interview needed. "The regulation only mandates that upon revocation of release, the petitioner must be given an initial opportunity to dispute the government's justification for revocation. There is no requirement that ICE give any advance notice of the informal interview" *Doe v. Smith*, 324 F. Supp. 3d 214, 223 (D. Mass. 2018) (denying petition for writ of habeas corpus following revocation). Notably, Petitioner will also be afforded additional procedural protections, including custody determinations under 8 CFR 241.4, going forward. *See* 8 C.F.R. 241.13(i)(2); Notice.

Federal Respondents have therefore complied with the applicable regulatory requirements, and Petitioner's claims premised on a failure to follow those requirements, should be dismissed.

IV. Petitioner's Detention Does Not Violate Due Process.

Petitioner's remaining claims premised on purported violations of his rights under the Due Process Clause of the Fifth Amendment, should also be dismissed. *See* Petition ¶¶ 22-24, 27-32. Though Petitioner makes no argument in support of his Due Process claim and does not articulate any theory as to how his rights were violated, *see* Petition ¶¶ 22-24 (lacking argument), he appears to rely on *Zadvydas*, 533 U.S. at 690, 693. *Id.* ¶ 24.

Under the Supreme Court's decision in *Zadvydas v. Davis*, a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained

indefinitely pending removal. 533 U.S. at 699-700. *Zadvydas* established a temporal marker: post-final order of removal detention of six months or less is presumptively constitutional. *Id.* at 701; *see also Sokpa-Anku v. Paget*, No. 17-cv-1107 (DWF/KMM), 2018 WL 3130681, at *3 (D. Minn. June 8, 2018) (report and recommendation) (“Once a person is finally ordered removed from the United States, it is presumptively constitutional for the government to detain him for a 6-month period.”), *R&R adopted*, 2018 WL 3129002 (June 26, 2018). However, continued detention does not necessarily become unconstitutional after six months. Detention longer than six months still comports with due process if there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. As the Court in *Zadvydas* explained:

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 for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the “reasonably foreseeable future” conversely would have to shrink. *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. (emphasis added). Thus, under *Zadvydas*, a habeas petitioner bears the initial burden of demonstrating that there is no significant likelihood of his removal in the reasonably foreseeable future. *Id.* If he does so, the government must rebut that showing. *Id.*

Even assuming *arguendo* that Petitioner’s current detention of less than 1 month in duration may be combined with his earlier immigration detention to aggregate to more than 6 months, Petitioner has not shown a due process violation under *Zadvydas* here, as he has not met his initial burden to “provide[] good reason to believe that there is no significant

likelihood of removal in the reasonably foreseeable future[.]” *See id.*; *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL 6878901, at *4 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013).

The Petition lacks *any* argument that Petitioner’s removal unlikely in the reasonably foreseeable future. *See generally* Petition. Nor did Petitioner make that argument at his informal interview. *See* Ex. D. That should be dispositive of his Due Process claims under *Zadvydas*, as Petitioner bears the initial burden on that issue. *Zadvydas*, 533 U.S. 678 at 701. One illustrative case, *Andrade*, involved a petitioner who had been detained for more than three years when his habeas appeal reached the Fifth Circuit. *Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006), *cert. denied*, 549 U.S. 1132, 127 S. Ct. 973, 166 L. Ed. 2d 739 (2007). The Andrade Court noted that *Zadvydas* “creates no specific time limits on detention,” rather 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.* (citing 533 U.S. at 701). It found that, since “[t]he alien bears the initial burden of proof in showing that no such likelihood of removal exists” and “ha[d] offered nothing beyond his conclusory statements suggesting that he will not be immediately removed . . . following the resolution of his appeals,” “[h]is constitutional claim [wa]s meritless.” *Id.* (citing *Zadvydas*, 533 U.S. at 701). So too here, where Petitioner did even offer a conclusory statement. *Id.*; *see also Skaftouros*, 667 F.3d at 158 (the burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treaties of the United States).

Petitioner's detention also serves a clear purpose "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Indeed, detention to facilitate removal has long been held to be a legitimate governmental objective. *See, e.g., Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held . . . while arrangements were being made for their deportation."). Petitioner's detention also has an obvious endpoint at removal. Petitioner has currently been detained for less than one month, and "the mere passage of time . . . is not alone sufficient to show that no such likelihood exists" without more. *See Chen v. Banieke*, No. CIV. 15-2188 DSD/BRT, 2015 WL 4919889, at *4 (D. Minn. Aug. 11, 2015); *Jaiteh v. Gonzales*, No. 07-cv-1727, 2008 WL 2097592 at *2-3 (D. Minn. Apr. 28, 2008).

Finally, even assuming *arguendo* that Petitioner has met his initial burden of proof under *Zadvydas*, the record would be sufficient to rebut any notion that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. Unlike efforts made at removal during Petitioner's prior period of detention, Electronic Nationality Verification is available for Jamaica, and Jamaica is now cooperating with ICE to issue travel documents. Ligon Decl. ¶ 22. ICE also recently made a request to query a Jamaican birth certificate for Petitioner, *id.* ¶ 23, who has repeatedly asserted that his mother was Jamaican, *id.*, and whose claims birth in Ontario have been debunked. ¶¶ 5, 12, 23; *see* Ex. E at 1; *see also Ahmed v. Brott*, No. 14-5000 (DSD/BRT), 2015 U.S. Dist. LEXIS 45346 (D. Minn. Mar. 17, 2015), at *4 (finding that where "ICE has made diligent and reasonable efforts to obtain travel documents," the alien's native country "ordinarily accepts repatriation," and "that country is acting on an

application for travel documents,” most courts conclude that there is a significant likelihood of removal in the foreseeable future.”).

In the interim, there is no procedural due process violation since, as discussed *supra*, ICE has complied with its regulatory obligations, and Petitioner will be entitled to normal custody determination procedures under 8 C.F.R. § 241.4. As the constitutional due process standard set forth in *Zadvydas* is also met, and the Petition should be denied.

V. Petitioner is Not Entitled to Injunctive Relief or a Temporary Restraining Order.

Finally, seemingly relying on the same arguments already addressed, the Petition seeks both a preliminary injunction enjoining respondents from re-detaining Petitioner without court approval and a Temporary Restraining Order for his immediate release from custody. *Id.* ¶¶ 27-32. Petitioner offers no legal basis for either request,⁶ *see id.*, which would not maintain the status quo in the present case.

Courts evaluating a motion for a TRO or preliminary injunctive relief weigh four factors: (1) the movant’s likelihood of success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm injunctive relief would cause to the other litigants; and (4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (*en banc*). Success on the merits is the most important factor—indeed, preliminary injunctive relief cannot be entered where a litigant cannot establish any likelihood of success on their claims. *Shrink Missouri*

⁶ Nor did Petitioner properly bring a motion for either a Temporary Restraining Order or a Preliminary Injunction as contemplated under this district’s local rules. *See* District of Minnesota Local Rule 7.1(d) (setting forth specific requirements for such motions) .

Government PAC v. Adams, 151 F.3d 763, 764 (8th Cir. 1998). Moreover, “[a] TRO is an extraordinary remedy, and the [Petitioner] has the burden of demonstrating that [she] is entitled to such relief.” *Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F. Supp. 303, 305 (D. Minn. 1986).

Here, for the reasons already discussed, Petitioner cannot show any likelihood of success on the merits. *See supra* §§ II-IV. Nor, even had he been able to show a violation of his due process rights—and he has not—would Petitioner be entitled to the relief he requests. *See, e.g., Doe*, 324 F. Supp. 3d at 226. In *Doe*, a petitioner similarly subject to an order of supervision, received a release notification and was abruptly re-detained. *Id.* at 7-13. As here, the petitioner brought a habeas petition seeking immediate release from custody, including based on the contention that she had not timely received an informal interview. *Id.* at 13-14. As the Court observed, “Doe is not challenging the underlying justification for the removal order (although she seeks to reopen the proceeding). Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity. There is thus no apparent reason why a violation of the regulation, even assuming it occurred, should result in release.” *Id.* at 24-25 (also noting regulations provide for conduct a custody review within 90 days under 8 C.F.R. § 241.4(k), and “[a]t that time, Doe may present any documentation or other evidence in support of her contention that continued detention is unwarranted.”). The same is true here.

Finally, though a lack of likelihood of success on the merits is dispositive, the remaining *Dataphase* factors do not collectively support relief. In the absence of an

injunction and TRO, the Petitioner will remain detained but may be removed from the country as he has repeatedly requested. See Ex. D (“I just want to go”); Ex. E at 2 (“I want to get the hell out of your country!!”). There is potential for harm to the government, including because Petitioner seeks an injunction requiring court approval for him to be re-detained, Petition ¶ 27, which would directly impact its removal efforts. The government would also incur costs in supervising Petitioner outside of detention or in later re-detaining him only subject to judicial approval. Moreover, there is a public interest in the efficient administration of the nation’s immigration laws. Thus, as with the first and most important factor, the remaining *Dataphase* factors thus do not weigh in Petitioner’s favor and Petitioner’s requests for emergency relief should be denied.

CONCLUSION

For all of the forgoing reasons, the Federal Respondents respectfully request that the Petition be dismissed.⁷

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⁷ The Federal Respondents do not believe an evidentiary hearing is necessary in this matter, as the submissions, including the declaration and exhibits, of the Federal Respondents provide the Court with a sufficient record upon which to adjudicate the Petition.