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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ANGEL LENIN SERVELLON GIRON, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Hon. Julien Xavier Neals, U.S.D.J. Civil Action No. 25-6301 (JXN)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

On the Brief:

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PRELIMINARY STATEMENT

Petitioner is subject to a final order of removal from July 2013 based on his removability as an alien who has been convicted of an aggravated felony crime of violence under the Immigration and Nationality Act ("INA"). In June 2014, Petitioner was granted a withholding of removal to his homeland, Honduras, and soon thereafter he was released pursuant to an order of supervision. On May 21, 2025, Petitioner was issued a notice of removal to Mexico and detained for that purpose. All of this was lawful under the INA.

Petitioner now brings a habeas action under 28 U.S.C. § 2241 seeking immediate release. But the Court does not have jurisdiction over the petition because 8 U.S.C. § 1252 bars review of his claims. And even if the Court had jurisdiction, the claims fail on the merits. The procedures followed by DHS regarding Petitioner's supervised release, revocation, and detention complied with the INA and relevant regulations. They provided notice and opportunities for review. The Court should dismiss the petition.

In light of Court's June 6, 2025 order that Respondents "shall electronically file a full and complete Answer to said Petition, which responds to the factual and legal allegations of the Petition paragraph by paragraph" as well as "state[s] the statutory authority for Petitioner's detention" and raises "any appropriate defenses which Respondents wish to have the Court consider," Respondents' Answer first addresses each of the paragraphs in the Petition and then briefs their arguments as to why the Court should dismiss the Petition.

ANSWER TO PETITION

JURISDICTION AND VENUE

1. Admitted that the individual Respondents are United States officials. The remaining allegations in Paragraph 1 set forth jurisdictional allegations that present legal conclusions addressed in the brief *infra* at 12–17.
2. The allegations in Paragraph 2 set forth jurisdiction allegations that present legal conclusions addressed in the brief *infra* at 12–17.
3. Admitted.

THE PARTIES

4. Admitted that Petitioner is a citizen and native of Honduras. All remaining allegations are denied.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

LEGAL BACKGROUND

10. Admitted.
11. The allegations in Paragraph 11 set forth legal conclusions addressed in the brief *infra* at 11–12.
12. Admitted.
13. The allegations in Paragraph 13 set forth legal conclusions addressed in the

brief *infra* at 11–12.

14. The allegations in Paragraph 14 set forth legal conclusions addressed in the brief *infra* at 11–12. Further, the preliminary injunction issued by the District of Massachusetts was stayed by the United States Supreme Court in *Department of Homeland Security v. D.V.D.*, No. 24A1153, 2025 U.S. LEXIS 2487 (June 23, 2025).

15. The preliminary injunction issued by the District of Massachusetts was stayed by the United States Supreme Court in *Department of Homeland Security v. D.V.D.*, No. 24A1153, 2025 U.S. LEXIS 2487 (June 23, 2025).

16. The allegations in Paragraph 16 set forth legal conclusions addressed in the brief *infra* at 8–12.

FACTS

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted

21. Admitted that Petitioner was detained by ICE on May 21, 2025, at a scheduled check-in. Respondents lack sufficient information to admit or deny the remaining facts in Paragraph 21.

22. Admitted.

23. Denied that ICE has violated the law in deporting individuals to third countries. Respondents lack sufficient information to admit or deny the

remaining facts in Paragraph 23.

24. Denied that Petitioner had no knowledge of the country to which he would be removed: as set forth in Exhibit E to his habeas petition, Petitioner understood that ICE intends to remove him to Mexico. ECF No. 1-5. Further denied that it is inevitable that Mexico will remove Petitioner to Honduras.

25. Admitted.

26. Denied as set forth *infra* at 12–20.

27. Admitted.

FIRST CLAIM FOR RELIEF

28. Respondents repeat and incorporate their answers to the preceding paragraphs as if set forth at length herein.

29. Denied as set forth *infra* at 12–20.

30. Denied as set forth *infra* at 12–20.

SECOND CLAIM FOR RELIEF

31. Respondents repeat and incorporate their answers to the preceding paragraphs as if set forth at length herein.

32. Denied as set forth *infra* at 12–20.

33. Denied as set forth *infra* at 7, 12–20.

34. Denied as set forth *infra* at 12–20.

35. Denied as set forth *infra* at 12–20.

THIRD CLAIM FOR RELIEF

36. Respondents repeat and incorporate their answers to the preceding

paragraphs as if set forth at length herein.

37. Denied as set forth *infra* at 12–20.

38. Denied as set forth *infra* at 12–20.

39. Denied as set forth *infra* at 12–20.

FOURTH CLAIM FOR RELIEF

40. Respondents repeat and incorporate their answers to the preceding paragraphs as if set forth at length herein.

41. Denied as set forth *infra* at 20.

42. Denied as set forth *infra* at 20.

43. Denied as set forth *infra* at 20.

REQUEST FOR RELIEF

The subsequent paragraph consists of Petitioner's demands for relief, to which no response is required. To the extent that any of the allegations set forth in this paragraph may be deemed factual in nature and directed to answering Respondents, Respondents deny the allegations.

BRIEF IN SUPPORT OF DISMISSING THE HABEAS PETITION

BACKGROUND

I. Petitioner's Immigration and Criminal History

Petitioner is a citizen and native of Honduras. *See* ECF No. 1 ("Pet."), ¶ 4. He entered the United States without inspection in May 1994. *See* Declaration of Angela Juneau ("Juneau Decl."), Ex. D at 4; Declaration of Joseph Burki ("Burki Decl.") ¶ 3. Three years later, he was convicted of malicious wounding in the Circuit Court of Arlington County, Virginia, and he was sentenced to eighteen months in prison and three years of probation. Juneau Decl., Ex. D. In November 2000, he was convicted of assault and battery against a family or household member and sentenced to ninety days in jail. *Id.*

In July 2013, the Department of Homeland Security ("DHS") took Petitioner into custody and issued a final administrative order of removal based on his removability as an alien who has been convicted of an aggravated felony crime of violence. *Id.*; Burki Decl. ¶ 4. Petitioner challenged DHS's charge of removability and his custody, but the immigration judge held that he lacked jurisdiction to reconsider Petitioner's custody status; the Board of Immigration Appeals affirmed the decision. Juneau Decl., Ex. D at 3–8.

Petitioner also expressed a fear of returning to Honduras and requested a reasonable fear interview. *Id.* at 4–5. On June 4, 2014, the day for which Petitioner's removal hearing was scheduled, he was granted a withholding of removal to Honduras. Juneau Decl., Ex. C; Pet. ¶ 18; Burki Decl. ¶ 5. That same day,

Immigration and Customs Enforcement ("ICE") issued an order of supervision setting forth the requirements of his release, and soon thereafter he was released from the detention center. Juneau Decl., Exs. E and F; Burki Decl. ¶ 6. Petitioner has routinely complied with the conditions of his order of supervision and has not been arrested or convicted of any crimes since 2004. Burki Decl. ¶¶ 6, 7.

On May 21, 2025, Petitioner was served with a notice of removal to Mexico and taken back into ICE custody. Juneau Decl., Ex. A; Burki Decl. ¶ 8. The contents of the notice were read to Petitioner in his native Spanish language, and Petitioner refused to sign the notice. Juneau Decl., Ex. A.

On May 30, 2025, Petitioner requested a reasonable fear interview because he was afraid not only of being sent to Honduras but also of being "sent to any other country." Juneau Decl., Ex. B at 2. He said that he fears he "will be in serious danger" because he "could be targeted for being a migrant or deported without any due process" or deported "back to my home country." *Id.*

At the time Petitioner filed this petition, he was housed at the Delaney Hall Detention Facility in Newark, New Jersey. Burki Decl. ¶ 9. On June 15, 2025, petitioner was transferred to the Winn Correctional Facility in Parish, Louisiana, where he currently remains. *Id.*

II. Procedural History

Petitioner filed this habeas petition On May 30, 2025. The petition asserts four claims. First, Petitioner claims that his detention violates 8 U.S.C. § 1231(a)(6) because he has been in custody for longer than ninety days. Pet. ¶¶ 28–30. Second,

Petitioner claims that his detention violates his due process rights because there is no significant likelihood that he will be removed to Honduras or a third country in the reasonably foreseeable future. *Id.* ¶¶ 31–35. Third, Petitioner alleges he is entitled to a writ of habeas corpus because Respondents either have no intention of removing him and thus lack a legal basis to detain him or, if they do intend to remove him, any such removal violates his right to notice and an opportunity to be heard. *Id.* ¶¶ 36–39. Fourth, Petitioner alleges that that Respondents intend to remove Petitioner to Honduras, either directly or by way of a third country, which would violate his procedural due process rights. *Id.* ¶¶ 40–43.

On June 3, 2025, Petitioner filed a motion for order to show cause. ECF No. 2. On June 6, 2025, the Court entered an Order to Answer, which provided that Respondents shall answer Petitioner's petition within thirty days and found Petitioner's motion for order to show cause was moot. ECF No. 4. Respondents were granted a one-week extension, making their answer due on July 14, 2025. ECF No. 8. Respondents submit this memorandum of law in response to the petition.

III. 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 "inadmissible" 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 an 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. 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

THE COURT SHOULD DISMISS THE HABEAS PETITION

The Court should dismiss the habeas petition for three reasons: the INA and REAL ID Act deprive the Court of jurisdiction; Petitioner's detention is lawful; and Petitioner has and will continue to be given all process due to him.

A. 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 recent revocation of his supervised release and present detention for purposes of executing a final order of

removal. Congress, however, divested this Court from hearing such claims by way of the INA and the REAL ID Act. *See* 8 U.S.C. §§ 1252(b)(9), (g). For these reasons, as discussed below, the Court lacks jurisdiction over Petitioner's claims challenging the revocation of supervised release and re-detention pending 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).[1] 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

[1] 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).

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 (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."). [2]

The Third Circuit's decision in *Tazu* is instructive. There, the petitioner sought to challenge the government's decision to re-detain him for prompt removal, claiming—much like Petitioner here—that a revocation of supervised release without notice and a revocation interview allegedly violated agency rules and due process. *See Tazu*, 975 F.3d at 298. The Third Circuit found that claim barred by 8 U.S.C. §

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[2] 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).").

1252(g) because it sought to challenge "a key part of executing" a removal order: a "short re-detention for removal." *Id.* As the Third Circuit recognized, re-detaining the petitioner was "simply the enforcement mechanism the [government] picked to execute [the petitioner's] removal order." *Id.* at 298-99. And § 1252(g) "funnels review" of such claims away from the district courts, and to the courts of appeals through a petition for review. *Id.* at 299. Here, as in *Tazu*, Petitioner challenges the enforcement mechanism utilized to execute his final order of removal: the decision to revoke supervised release and re-detain him pending removal. And as in *Tazu*, this Court lacks jurisdiction over such claims under 8 U.S.C. § 1252(g).

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 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.

Once again, the Third Circuit's *Tazu* decision guides the analysis. In another part of that decision, the Third Circuit held that the same claims concerning a revocation of supervised release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9) because the claims arose from actions taken to execute the petitioner's removal. 975 F.3d at 299. Here, as in *Tazu*, Petitioner's claims challenge the government's decision to revoke supervised release and re-detain him for removal. Petitioner's claims arise directly out of actions taken to remove him, and the questions raised by those claims are intertwined with his removal. *See id.*

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. *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—"not over actions by the Secretary of State, like [the] determination" at issue, "and not over across-the-board policies, like the one alleged" in that case. *Id.* Here, Petitioner does not challenge any action by the Secretary of State, nor does he attack any alleged broad-based policies. The reasoning behind the recent jurisdictional decision in *Khalil* does not affect the conclusion here.

Accordingly, 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.[3]

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[3] Respondents are also aware of an out-of-district case *Patel v. Barr*, No. 20-3856, 2020 WL 6888250, at *3 (E.D. Pa. Nov. 24, 2020), but respectfully submit that the case is also distinguishable. In *Patel*, the district court held that the jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(b)(9) and 1252(g) did not apply, notwithstanding *Tazu*, because while Tazu had a pending petition for review and had been granted a stay of removal, Patel had neither. Because, in *Patel*, the Board of Immigration Appeals delayed ruling on Patel's various motions, the court found that Patel "ha[d] no access to judicial review." *Id.* at *3. Here, however, Petitioner's immigration decisions are administratively final. Petitioner could have sought review of the immigration judge's decision. But he did not, and waived his

B. Petitioner's Detention is Lawful (Counts I, II, and III)

There is no dispute that Petitioner is subject to a final order of removal. *See* Juneau Decl., Ex. D; Burki Decl. ¶ 4. 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.* To hold otherwise, a 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). After that six-month period, the alien bears the burden

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administrative appeal, thus rendering that decision by the immigration judge administratively final.

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's *Zadvydas* claim is premature because he has been detained on a final order of removal for far less than the "presumptively reasonable" six-month period. *See* 533 U.S. at 701. Petitioner's detention began on May 21, 2025, when ICE revoked Petitioner's supervised release. *See* Pet. ¶ 21; Juneau Decl. Ex A. Thus, at the time he filed this habeas petition on May 30, 2025, he had been detained for just nine days. And to date, he has been detained for fewer than 60 days.

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."); *but see Munoz-Saucedo v. Pittman*,

25-2258 (CPO), 2025 U.S. Dist. LEXIS 120414, at *18–*20 (D.N.J. June 24, 2025) (holding petitioner could show removal was not reasonably foreseeable before six-month mark). The Court should thus dismiss Counts I, II, and III without prejudice as premature because Petitioner has not been detained beyond the six-month period set forth in *Zadvydas*.

C. The Procedural Due Process Claim Also Fails (Count IV)

In Count IV, Petitioner alleges that Respondents "intend to remove Petitioner to Honduras" or "to a third country which will in turn remove Petitioner back to Honduras, without adequate notice and opportunity to be heard, thus violating his procedural due process rights under the Fifth Amendment." Pet. ¶¶ 42–43. The Court should dismiss this count because Petitioner cannot state a due process violation as a matter of law.

The basic elements of due process are notice and an opportunity to be heard. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Here, on May 21, 2025, Petitioner received a notice of removal to Mexico, and nine days later he filed an affidavit regarding his fear of being sent to Honduras or any other country and asking for a reasonable fear interview, which is pending. Juneau Decl. Exs. A & B. Petitioner has not alleged any facts to demonstrate that he was denied an opportunity to be heard in connection with the notice of removal. Further, there is no allegation that Petitioner's removal has been scheduled.

CONCLUSION

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

Respectfully submitted,

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