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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

S.F.,

Petitioner,

v.

DREW BOSTOCK; KRISTI NOEM; PAMELA BONDI; TODD LYONS; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOM ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE,

Respondents.

Case No. 3:25-cv-01084-MTK

RESPONDENTS' RESPONSE TO PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Issues

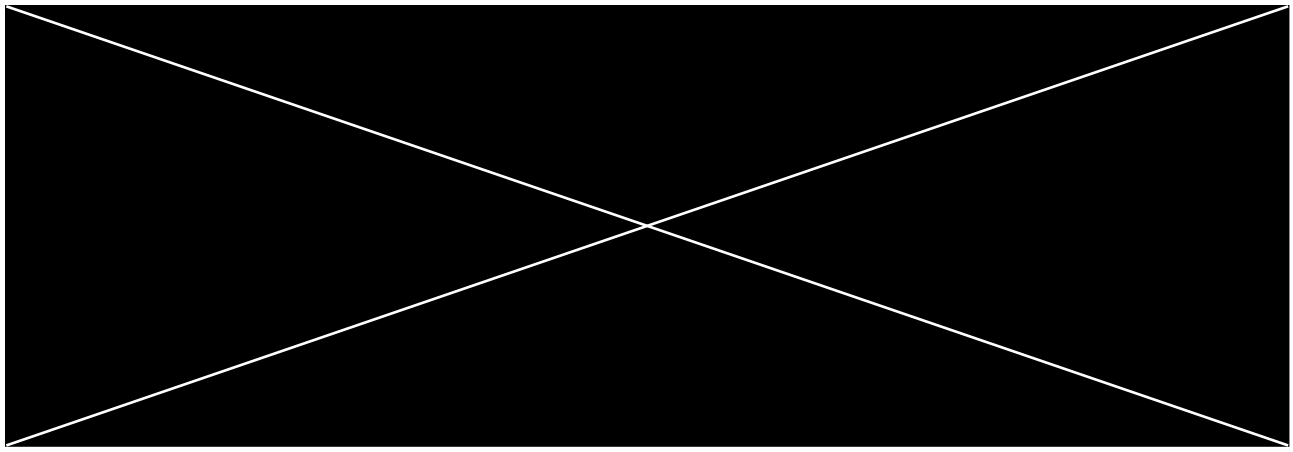
1. Under Immigration and Nationality Act § 242(g), 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General [or her delegates] to ... execute removal orders against any alien," including under "section 2241 of Title 28, or any other habeas corpus provision." Petitioner has filed a habeas petition under 28 U.S.C. § 2241 seeking release from detention as Immigration and Customs Enforcement prepares to execute a decades-old final order of removal against him. This Court lacks jurisdiction to adjudicate the habeas petition.

2. Under Supreme Court precedent, a court might exercise habeas jurisdiction if a detained alien under a final order of removal can show that there is no significant likelihood that he will be removed in the reasonably foreseeable future. Here, ICE is considering placing Petitioner on a charter removal flight to Iran scheduled to leave during the first week of October. Because removal is plausible in the coming weeks, Petitioner cannot demonstrate the absence of a likelihood of removal required to invoke habeas jurisdiction.

3. If ICE decides to remove an alien to a third country, courts have recognized that the alien is entitled to due process before the third-country decision becomes final. Here, because ICE has focused on removing Petitioner to Iran, ICE has not taken steps to effectuate his removal to a third country. Because no decision triggering the requirement for due process has occurred, judicial review of the issue is not ripe.

4. Under Ninth Circuit precedent, a court must consider the public interest when it decides whether to allow a party to proceed under a pseudonym. In light of Petitioner's extensive criminal history, all in the public record, the public has an interest in knowing his removal status. Although the Court previously granted Petitioner's request to proceed under a pseudonym, Respondents will summarize their argument in this brief one more time to preserve it for appeal.

Statement of the Case and Facts



Years before the incident, the U.S. government had entered a final order of removal against Petitioner, an Iranian citizen, after Petitioner overstayed his visa. Today, as the U.S. government is on the cusp of deporting him, Petitioner is trying to stall.

This Court lacks jurisdiction to entertain Petitioner's invitation to stall.

I. Legal Framework

A. The Executive Branch has broad authority to execute final orders of removal.

The Immigration and Nationality Act confers authority on the Executive Branch to adjudicate whether an alien should be removed from the country or granted asylum. *See generally* 8 U.S.C. Ch. 12.

The process begins when an immigration officer of the Department of Homeland Security charges an alien as inadmissible. *See* INA § 240(a)(2), 8 U.S.C. § 1229a(a)(2) (indicating that an alien placed in removal proceedings may be charged with any applicable removability ground). The immigration officer notifies the alien of the charges and statutory provisions violated by issuing the alien a document called a notice to appear.

Removal proceedings begin when the immigration officer files the notice appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court).

The notice to appear indicates when and where the proceedings will be held. INA § 240(a)(1)(g), 8 U.S.C. § 1229(a)(1)(g). An immigration judge conducts the proceedings for deciding the inadmissibility or removability of an alien. *Id.* § 1229a(a)(1).

If the immigration judge sustains a charge of removability or inadmissibility in the notice to appear, the alien may file an application for relief. The grant of an

application for relief would result in the ability to lawfully remain in the United States. One such application is a Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture.

Throughout an alien's removal proceedings, the alien may be represented by counsel at no expense to the government. INA § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A). He also has the opportunity to examine the evidence against him, to present evidence on his own behalf, and to cross-examine the government's witnesses. *Id.* He may request asylum, withholding of removal, or withholding of removal under regulations implementing the Convention Against Torture, which would allow him to remain and work in the United States.

An alien who is dissatisfied with an immigration judge's decision may appeal to the Board of Immigration Appeals ("BIA"). After an adverse BIA decision, the alien may seek Article III judicial review in a federal court of appeals. INA § 242, 8 U.S.C. § 1252.

II. Petitioner has been subject to a final order of removal for more than 20 years.

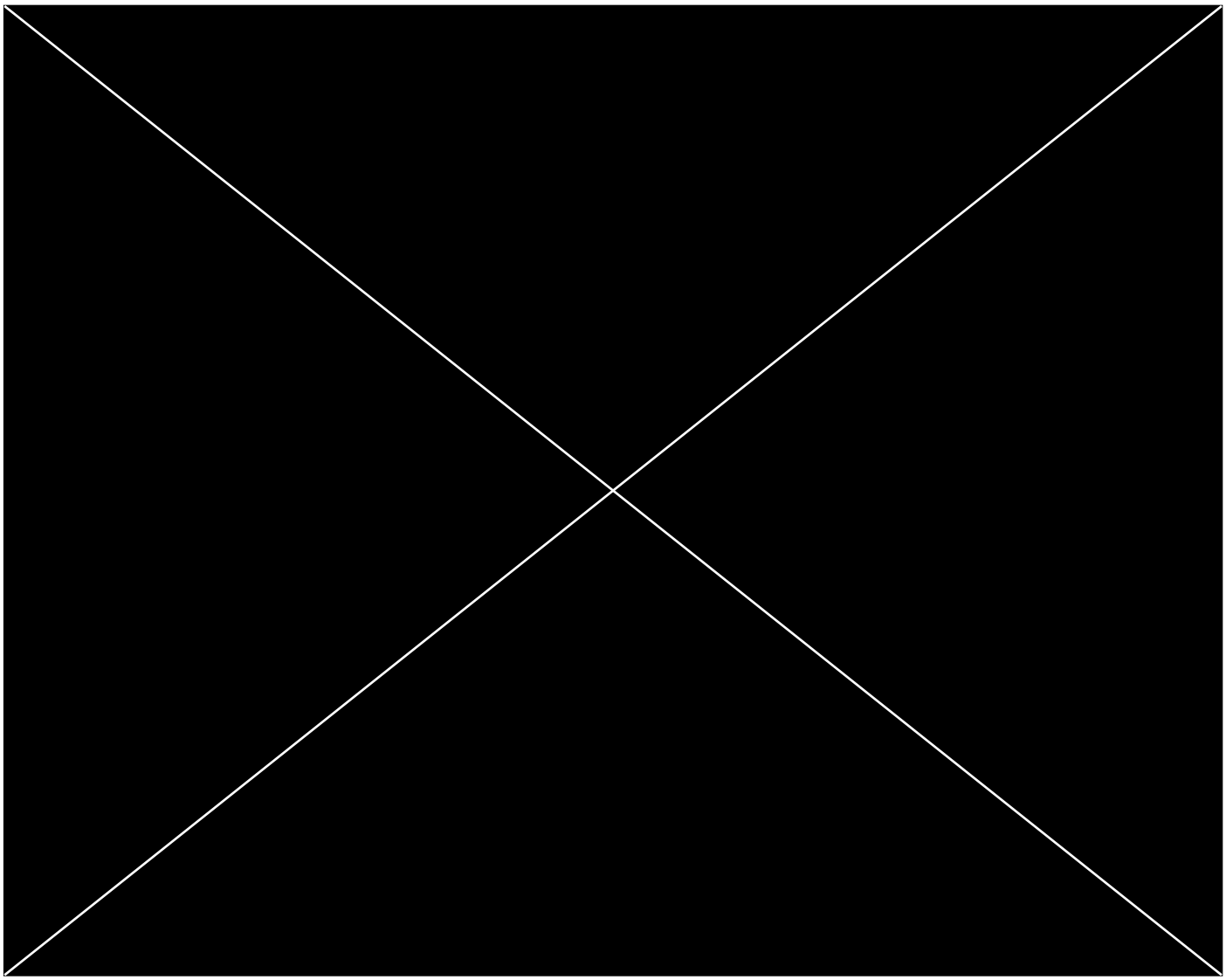
Petitioner entered the United States with a visa in August 1999 and overstayed it. ECF 10, Declaration of Mihaela Hammer ¶ 4. ICE's predecessor, the Immigration and Naturalization Service, placed Petitioner in removal proceedings. *Id.* ¶ 5. Petitioner filed an application for asylum. ECF 1 ¶ 24.

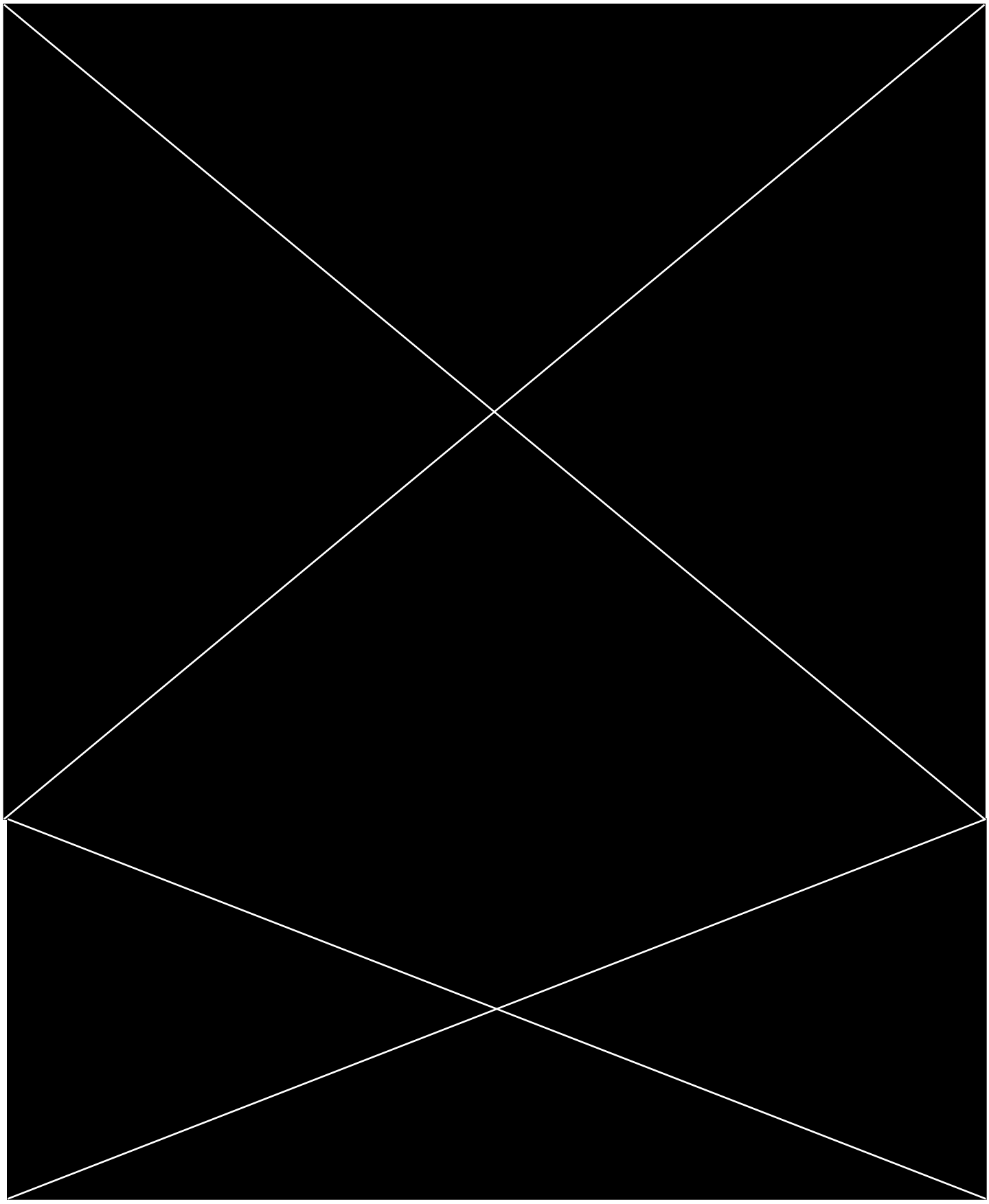
An immigration judge entered an order of removal and denied the asylum application. Hammer Decl. ¶ 6. Petitioner appealed to the Board of Immigration Appeals, which dismissed the appeal, on January 2, 2004, rendering the order

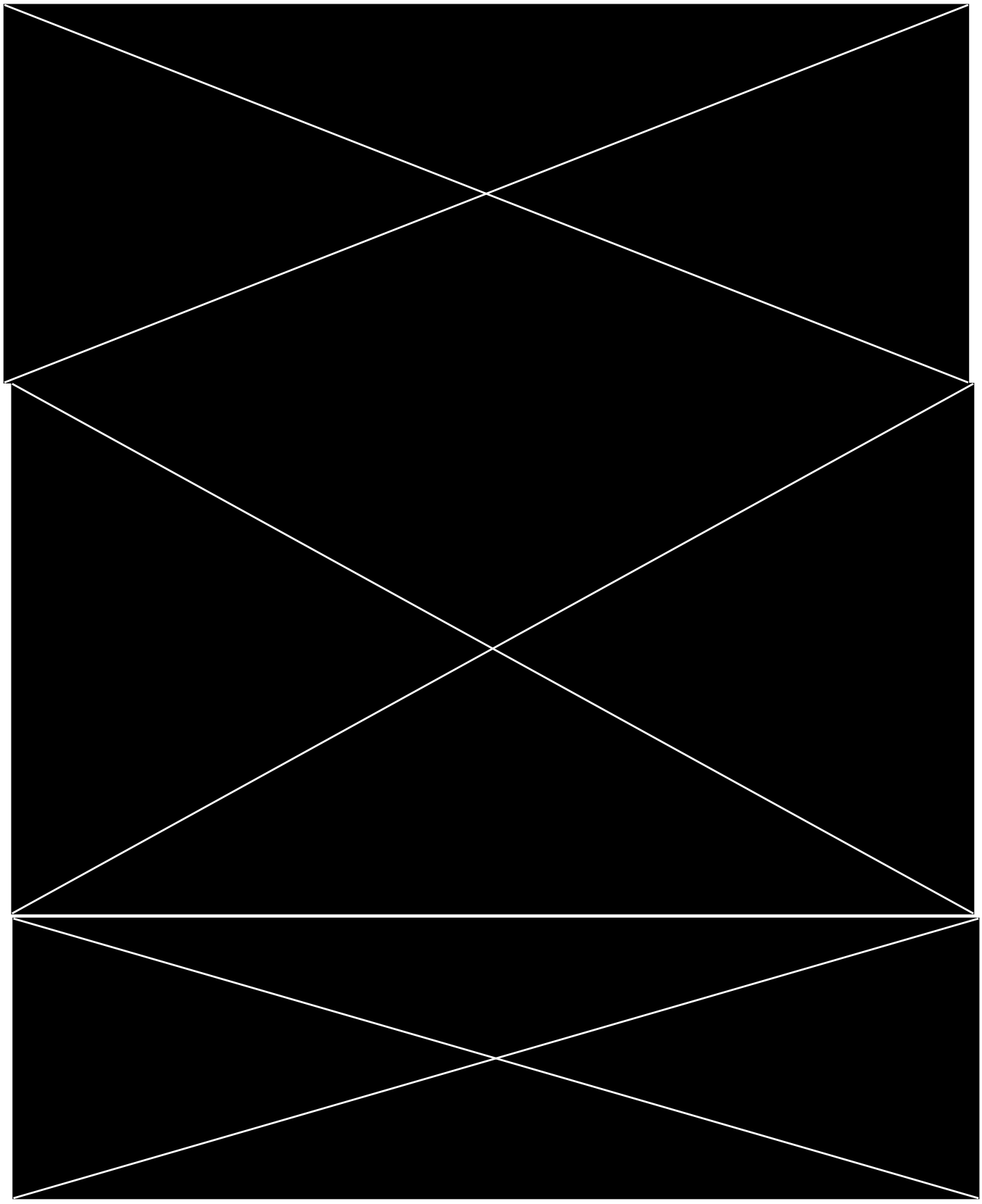
administratively final. *Id.* ¶ 7. Petitioner could have sought judicial review in the Ninth Circuit, but he did not.

ICE attempted but failed to obtain a travel document to Iran for Petitioner. *Id.* ¶ 9. In April 2006, ICE released Petitioner on an order of supervision, which has required him not to commit crimes while under supervision. *Id.* ¶ 11.

III. Since his order of removal became final, Petitioner has committed a panoply of crimes, including felonies.







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IV. ICE revoked Petitioner's order of supervision and took him into custody in preparation for his removal.

On June 24, 2025, ICE detained Petitioner and issued him a notice of revocation of release explaining that Petitioner violated the release terms of his order of supervision [redacted] Hammer Decl. ¶ 13. In a Form I-213, Record of Deportable/Inadmissible Alien, ICE officers noted that Petitioner's order of removal became final in January 2004. *Id.* ¶ 14. The officers recited Petitioner's criminal history. *Id.* The officers noted that "because of the seriousness of the criminal activities, [Petitioner] will be transported to the Northwest Immigration Processing Center for repatriation arrangements." *Id.*

ICE has submitted a request for a travel document to Iran. Declaration of Enrique Rodriguez ¶ 3. Although ICE assessed Petitioner's case for third-country removal, ICE has not taken any steps to effectuate third-country removal because ICE still is attempting to remove Petitioner to Iran. *Id.* ¶ 4.

On July 21, 2025, this Court issued a preliminary injunction barring ICE from removing Petitioner from the United States. ECF 18. The hearing that day was supposed to be for a temporary restraining order; the Court did not give the parties prior notice that it would issue a preliminary injunction.

This Court held an evidentiary hearing on August 12, 2025. Since then, ICE has been attempting to charter a removal flight to Iran, with the flight currently scheduled for the first week of October. Rodriguez Decl. ¶ 5. At this writing, it is uncertain whether Petitioner would need a travel document to be placed on the flight. *Id.* Respondents will update the Court if ICE concludes that it wants to place Respondent on the flight. As long as the preliminary injunction is in force, the government would not be able to place Petitioner on the flight.

Argument

V. This Court lacks jurisdiction to review ICE's execution of a final order of removal.

A. Statutes and Supreme Court precedent foreclose judicial review.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the Immigration and Nationality Act, Congress provided in the newly enacted INA § 242(g), 8 U.S.C. § 1252(g) that,

> Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C. § 1252(g) (1996). In 2005, in the REAL ID Act, Congress amended section 1252(g) to clarify that the statute's proscription against jurisdiction applies to

habeas petitions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310–11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, section 1252(g) now provides that,

> Except as provided in this section and notwithstanding any other provision of law, (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (2017).

The IIRIRA and REAL ID Act amendments to the INA reflect Congress's desire to "streamline immigration proceedings" and to "effectively limit all aliens to one bite of the apple with regard to challenging an order of removal." *Singh v. Gonzales*, 499 F.3d 969, 976-77 (9th Cir. 2007) (quoting *Bonhometre v.Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005)). "Under these amendments, individuals who seek to challenge an order [of removal] may do so, but only as part of a petition for review in the appropriate court of appeals, as provided under section 1252." In particular, section 1252(b)(9) provides that,

> Judicial review of all questions of law and fact, including interpretation and application 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.*" Except as otherwise provided in this section, *no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or*

> *1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.*

INA § 242(b)(9), 8 U.S.C. § 1252(b)(9) (emphasis added); *see also* INA § 242(a)(5), 8 U.S.C. § 1252(a)(5) ("Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal ....").

This body of law deprives the Court of jurisdiction to release Petitioner from immigration detention or to otherwise review the execution of his final order of removal. In *AADC*, the Supreme Court held that section 1252(g) precludes judicial review of three discrete actions that DHS may take: the "'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482. Petitioner had his opportunity to seek judicial review of his order of removal in the Ninth Circuit more than 20 years ago, but he did not pursue it. Now that ICE is executing the removal order, he cannot invoke habeas jurisdiction to stall the execution.

In his habeas petition, Petitioner suggested that the United States' bombing of Iran in June 2025 was related to ICE's decision to detain him, a few days later. ECF 1 ¶¶ 30–31. The Court has expressed agreement with that view. The record contains no evidence to support that view, and that view is irrelevant:
The "discretion to decide *whether* to execute a removal order includes the discretion

to decide *when* to do it. Both are covered by the statute." *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (citation and quotation marks omitted).

B. Supreme Court precedent forecloses jurisdiction under the Suspension Clause, and Petitioner's failure to file a motion to reopen in the BIA belies his Suspension Clause theory.

In his habeas petition, Petitioner asserted that he desired to delay his removal so he could file a motion to reopen his removal proceedings in the BIA and seek a withholding of removal because of his fear of returning to Iran. ECF 1 ¶¶ 34–37. At this writing, 78 days have passed, but Petitioner has not filed a motion to reopen, even though the Court has asked Petitioner about his intentions in essentially every hearing. Petitioner's lack of action belies any argument he might have for jurisdiction under the Suspension Clause.

As an initial matter, the Suspension Clause does not afford Petitioner a right to habeas merely because he wants to file a motion to reopen. The right to file motion to reopen is the right to have the BIA adjudicate the motion, not to remain in the United States until the BIA adjudicates it. As the Supreme Court held, habeas "has traditionally been a means to secure release from unlawful detention, ... [not to] to achieve an entirely different end, namely, to obtain additional administrative review of [an] asylum claim and ultimately to obtain authorization to stay in this country." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). In a case similar to this one, the Ninth Circuit held that an alien could not invoke habeas jurisdiction under the Suspension Clause to stay his removal until the BIA ruled on his motion to reopen. *Rauda*, 55 F.4th at 777. "Rather than

seeking the traditional use of habeas, [Petitioner] specifically wants to *avoid* being released (into El Salvador). ... [Petitioner] is not using habeas in anything like the traditional sense, and therefore, as the Supreme Court held in *Thuraissigiam*, the relevant statute limiting habeas review does not violate the Suspension Clause." *Id.* at 780. Consistent with those holdings, DHS regulations provide that a motion to reopen "shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the [BIA]." 8 C.F.R. § 1003.2(f). Thus, a district court is "without jurisdiction to hear ... a claim, even if the claim is for a short stay while [Petitioner] seeks additional administrative remedies." *Diaz-Amezcua v. Johnson*, No. C14-1313 MJP, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015).

In earlier briefing, Petitioner argued, and the Court agreed, that removal to Iran before the BIA adjudicates a motion to reopen effectively would deprive Petitioner of his right to habeas, invoking jurisdiction under the Suspension Clause. *See* ECF 11 at 7–8. While Respondents disagree with that premise, Petitioner's position collapses even under that premise.

Now having gone 78 days without filing a motion to reopen, Petitioner has demonstrated that he has no intention to file one. In his most recent brief, unlike in his habeas petition, Petitioner nowhere states that he will be filing a motion to reopen; instead, he rattles off a few arguments that he should make in a motion to reopen before the BIA. *See* ECF 27 at 5–8 (Parts IV and V). Petitioner concedes that he "does not challenge the immigration judge's determination that he is

removable or claim any deficiency in the removal order itself." ECF 27 at 3. The Suspension Clause does not provide a vehicle for Petitioner to stall the execution of a valid removal order when he is not pursuing an administrative remedy.

VI. There is a significant likelihood of removal in the reasonably foreseeable future given that Petitioner could be placed on an October charter removal flight.

While he drops his request for a stay of removal so he can file a motion to reopen, Petitioner advances a new argument in his most recent briefing, that there is no significant likelihood that he will be removed in the reasonably foreseeable future, often called "SLRRF" in immigration parlance. ECF 27 at 11–13. Petitioner's theory, apparently, is that he can dispense with a motion to reopen; walk out of detention; and bide his time, hoping that ICE will never obtain a travel document to Iran. That theory is mistaken.

In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to INA § 241(a)(6), 8 U.S.C. § 1231(a)(6), is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court specified that section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

The Supreme Court held that it is "presumptively reasonable" for the government to detain an alien for six months after the entry of a final order of removal while it works to remove the alien from the United States. *Id.* at 701. Thus, the Supreme Court implicitly recognized that six months is the earliest point at which an alien's detention could raise constitutional issues. *Id.*

Looking at his aggregate time in immigration detention during the last two decades, Petitioner tallies 195 days as of the filing of his most recent brief, just past the presumptive 180-day threshold of presumptive reasonableness. ECF 27 at 13. As the Supreme Court cautioned, however, the six-month presumption "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." *Zadvydas*, 533 U.S. at 701.

Petitioner's detention continues to be reasonable for two reasons.

First, Petitioner's potential inclusion on a charter removal flight to Iran in early October demonstrates that there is a significant likelihood of removal in the reasonably foreseeable future. If this Court does not bar Petitioner's transport from the Tacoma detention facility, one can reasonably expect that the government will need time in the coming weeks to move Petitioner to a location where he can be placed on the flight. As this brief explained above, the situation concerning Petitioner's placement on the flight remains fluid, so Respondents will update the Court if significant developments occur.

Second, as Petitioner acknowledges, "[the district court] should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." ECF 27 at 12 (quoting *Zadvydas*, 533 U.S. at 699). Petitioner's acknowledgement of that principle is striking: During the past two decades, he has accumulated a record of dishonesty, disregard of court orders, and repeated criminal conduct—not to mention his stalling actions in this case. He cannot be trusted to ensure his "presence at the moment of removal" if he is released from detention. *Zadvydas*, 533 U.S. at 699.

VII. The prospect of third-country removal, for which a process exists, is not ripe for adjudication.

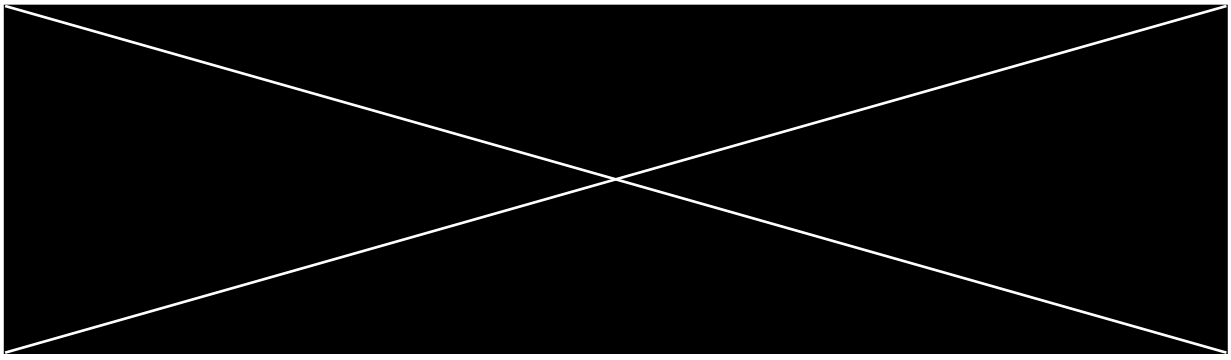
Because ICE remains focused on removing Petitioner to Iran, ICE has not taken any steps to effectuate his removal to a third country. Rodriguez Decl. ¶ 4. And, as Petitioner explains, removal to a third country would require that Petitioner receive due process before removal, a point that Respondents do not dispute here. ECF 27 at 9; *see generally Aden v. Nielsen*, 409 F.Supp.3d 998 (W.D. Wash. 2019).

The issue of third-country removal is unripe. The Court should deny the petition to the extent it is based on a challenge to third-country removal on the understanding that Petitioner may raise the issue in a future petition if the issue becomes ripe.

VIII. The Court's decision to allow Petitioner to proceed under a pseudonym was in error.

Although the Court overruled Respondents' objection to Petitioner's proceeding under a pseudonym, Respondents wish to briefly summarize their position on this important issue to preserve it for appeal.

The public interest is a weighty consideration when a court decides whether to allow a party to forgo the usual practice of proceeding under his true name in the public record. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072 (9th Cir. 2000). Here, the public interest should carry great weight: Petitioner has been



Respondents respectfully submit that the Court gave inadequate weight to the public interest. While Petitioner has received protection in this case,

has not received protection here. The Court has sealed court records offered as evidence in this case, yet those records remain available in the public record outside this case. Respondents submit that the Court's decision does not give adequate weight to the public interest, which includes the general public's, the media's, and victim's rights to know the full content of judicial proceedings.

Conclusion

This Court should deny the habeas petition.

DATED this 9th day of September 2025.

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