UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

ISRAEL ADONAY SAGASTIZADO SANCHEZ, Petitioner, v. KRISTI NOEM, Secretary of Homeland Security, ET AL., Respondents.	§ § § § § § § § § § § §	CIVIL ACTION NO. 5:25-CV-104

RESPONDENTS' MOTION TO DISMISS
<u>PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS</u>

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the Respondents, Kristi Noem, Secretary of the U.S. Department of Homeland Security, Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), Daniel Bible, San Antonio Field Office Director for ICE, Pamela Bondi, Attorney General of the United States, and the unnamed Warden of the Webb County Detention Center, Respondents, in their official capacities, by and through the United States Attorney for the Southern District of Texas, and hereby file their Motion to Dismiss Petitioner Israel Adonay Sagastizado Sanchez's Petition for Writ of Habeas Corpus (Petition) pursuant to Rules 12(b)(1) & 12(b)(6) of the Federal Rules of Civil Procedure.

<u>FACTUAL & PROCEDURAL BACKGROUND</u>

Petitioner Israel Adonay Sagastizado Sanchez (Sagastizado) is a native and citizen of El Salvador who entered the United States without inspection on an unknown date and location. See Exhibit A – Copy of Form I-213 Record of Deportable/Inadmissible Alien. On February 22, 2024, Sagastizado was found inadmissible and was ordered removed from the United States to El Salvador by an immigration judge at his removal hearing. See Exhibit B – Copy of Removal Order of Immigration Judge. The Order of the Immigration Judge further indicates that withholding of removal to El Salvador was granted. Id. On May 6, 2024, Sagastizado was released from immigration custody on an Order of Supervision, because while he had been ordered removed, his removal was not "effected…during the period prescribed by law", and he was released on certain specified conditions including that he report in person on May 6, 2025, to an ICE Office in Baltimore Maryland. See Exhibit C – Order of Supervision.

On May 6, 2025, Sagastizado was served with a Notice of Revocation of Release notifying him that his former Order of Supervision had been revoked and that he would be detained in ICE custody because the Government of Mexico had agreed to accept his repatriation to facilitate his removal from the United States. See Exhibit D – Notice of Revocation of Release. On that date, he was also served with a Warrant of Removal/Deportation and was taken into ICE Custody. See Exhibit E – Warrant of Removal/Deportation. Sagastizado was also served with DHS Form I-286, Notice of Custody Determination, which indicated that pending a final administrative determination, he would be detained by DHS. See Exhibit F – DHS Form I - 286. Sagastizado requested that an immigration judge review his custody determination in the Form I – 286. Id. He was also served with a Notice to Alien of File Custody Review, which indicated that his immigration detention would be reviewed on or about August 4, 2025. See Exhibit G – Notice to Alien of File Custody Review.

On June 25, 2025, Sagastizado filed his Petition in this Court seeking his release from ICE custody at the Webb County Detention Center in Laredo, Texas, where he was detained pending removal from the United States. On June 26, 2025, this Court issued an Order directing the District Clerk to serve copies of the Petition on Respondents and ordered Respondents to submit a response to the Petition by no later than July 28, 2025. On July 28, 2025, Respondents filed their Unopposed Motion for Extension of Time to Respond to Petitioner's Petition for Writ of Habeas Corpus. On that date, the Court extended the time for Respondents to file their response to the Petition to August 8, 2025.

STANDARD OF REVIEW

Rule 12(b)(1), Federal Rules of Civil Procedure, permits dismissal of an action when the court lacks subject matter jurisdiction. A motion under Rule 12(b)(1) may be decided on any of three bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Barrera-Montenegro v. United States*, 74 F.3d 657,659 (5th Cir. 1996); *Fletcher v. United States Dept. of Veterans Affairs*, 955 F.Supp. 731, 733-34 (S.D. Tex. 1997).[1]

A motion under Rule 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Home Builders Association of Miss., Et Al. v. City of Madison, Miss., Et Al.*, 113 F.3d 1006,1009 (5th Cir. 1998); *Benton v. United States*, 960 F.2d 19,21 (5th Cir. 1992). A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case. *Home Builders Association of Miss.*, 113 F.3d at 1009; *Nowak v. Ironworkers*

[1] Because this motion is based on Rule 12(b)(1) of the Federal Rules of Civil Procedure, evidence of undisputed facts that bear on the Court's subject matter jurisdiction may be introduced without converting the motion into a motion for summary judgment. *Williamson*, 645 F.2d at 414.

Local 6 Pension Fund, 81 F.3d 1182,1187 (2d Cir 1996). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting subject matter jurisdiction. *St. Paul Reinsurance Company, LTD. v. Greenburg*, 134 F.3d 1250,1253 (5th Cir. 1998). The question of subject matter jurisdiction is an issue for the court to decide. *Williamson v. Tucker*, 645 F.2d 404,413 (5th Cir. 1981).

Rule 12(b)(6) allows dismissal if a plaintiff fails "to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Supreme Court confirmed that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). *Twombly* overruled the Supreme Court's prior statement in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." See *Twombly*, 550 U.S. at 562-63 ("*Conley's* 'no set of facts' language ... is best forgotten as an incomplete, negative gloss on an accepted pleading standard ...."). To withstand a Rule 12(b)(6) motion, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

In *Ashcroft v. Iqbal*, --- U.S. ----, 129 S.Ct. 1937 (2009), the Supreme Court elaborated on the pleading standards discussed in *Twombly*. The Court set out the following procedure for evaluating whether a complaint should be dismissed: (1) identify allegations that are conclusory, and disregard them for purposes of determining whether the complaint states a claim for relief; and (2) determine whether the remaining allegations, accepted as true, plausibly suggest an entitlement to relief. *Iqbal*, 129 S.Ct. at 1949-50.

With respect to the "plausibility" prong of the dismissal analysis, *Iqbal* explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The *Iqbal* Court further noted that "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). Finally, the Supreme Court has made clear that "'when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, 'this basic deficiency should ... be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)(quoting *Twombly*, 550 U.S. 544).

ALLEGATIONS CONTAINED IN HABEAS PETITION

Through his petition, Sagastizado alleges that he is a citizen of El Salvador who was granted withholding of removal to El Salvador by an Immigration Judge, and that he was later taken into custody by ICE for purposes of removing him from the United States to Mexico. See Petition at page 7. Sagastizado claims that he was arrested without warning, that he is being detained for no reason, and that ICE is seeking to deport him without observance of any legal procedures whatsoever. Id. at pages 1 – 2. Sagastizado characterizes his continued immigration detention as illegal and alleges that if he is removed to Mexico, Mexico will in turn remove him to El Salvador. Id. at page 7. Sagastizado concludes that he must be released because his continued detention is unreasonable under *Zadvydas*, there is no likelihood of his removal from the United States in the reasonably foreseeable future, there is no legal basis for his detention, his continuing detention violates his due process rights, and government regulations and procedures do not allow him to be removed to Mexico. Id. at pages 8 - 10.

APPLICABLE LEGAL PROVISIONS

I. Habeas Corpus.

The only function of habeas corpus is to inquire into the legality of the detention of one in detention. *Heflin v. United States*, 358 U.S. 415, 421 (1959). Habeas exists "to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him. Indeed, it has no other power; it can only act on the body of the petitioner." *Fay v. Noia*, 372 U.S. 391, 430-31(1963). "This means that, unlike direct review where the correctness of a court or agency order is comprehensively and directly before the court, a habeas court reviews the correctness of such an order only insofar as it related to 'detention simpliciter.' Moreover, habeas is not shorthand for direct review, and unlike direct review where courts have 'broad authority' to grant relief, habeas is not 'a generally available federal remedy for every violation of federal rights,' nor can it 'be utilized to review a refusal to grant collateral administrative relief, unrelated to the legality of custody.'" [2] *Zalawadia v. Ashcroft*, 371 F.3d 292, 299-300 (5th Cir. 2004).

II. Detention Authority under the Immigration and Nationality Act.

While 8 U.S.C. § 1226(a) governs detention "pending a decision on whether the alien is to be removed from the United States", Section 1231(a) of Title 8 governs detention "when an alien is ordered removed". See 8 U.S.C. §§ 1226(a), 1231(a)(1)(A). See also *Zadvydas v. Davis*,

[2] The Supreme Court has determined that 28 U.S.C. § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention. *Zadvydas*, 533 U.S.at 688.

533 U.S. 678, 683 (2001); *Andrade v. Gonzales*, 459 F.3d 538, 542-43 (5th Cir. 2006). The latter statute provides in part that the government "shall remove the alien from the United States within a period of 90 days" beginning after one of three possible events, and that "[d]uring the removal period, the [government] shall detain the alien". 8 U.S.C. §§ 1231(a)(1)(A), 1231(B), 1231(a)(2).[3] A "removal period" commences on the latest of the following dates:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If 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.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). The purpose of the 90-day removal period is to "afford the government a reasonable amount of time within which to make the travel, consular, and various other administrative arrangements that are necessary to secure removal." *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008).

If removal is not effected during a "removal period", continued detention is authorized in certain cases:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6). In *Zadvydas*, the Supreme Court determined that Section 1231(a)(6)

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[3] Like many provisions in the Immigration and Nationality Act ("INA"), as amended, Section 1231(a)(2) refers to the "Attorney General," but the Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135 (2002), transferred most immigration enforcement functions from the Department of Justice to the Department of Homeland Security. Statutory references to the Attorney General thus often instead mean the Secretary of Homeland Security. See 6 U.S.C. §§ 202(3), 557.

authorizes detention for a period that is "reasonably necessary" to accomplish the alien's removal from the United States. See *Zadvydas*, 533 U.S. at 699-700. The Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. Id. at 701. To prevent "indefinite" detention, the *Zadvydas* Court held that after the 6-month period has elapsed, an alien may seek his release by demonstrating that his removal is not likely to occur in the reasonably foreseeable future. *Id.* at 699. "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months[;] [t]o the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

An alien detained under post-removal-order custody authority is not entitled to a bond hearing before an Immigration Judge. See 8 C.F.R. § 1003.19 (providing only for Immigration Judge jurisdiction to review custody determinations under 8 U.S.C. § 1226; 8 C.F.R. §§ 236, 1236); see also *Matter of A-W-*, 25 I. & N. Dec. 45, 46-47 (BIA 2009) ("Immigration Judges have only been granted authority to redetermine the conditions of custody of aliens who have been issued and served with a Notice to Appear in relation to removal proceedings pursuant to 8 C.F.R. Part 1240."). However, an alien subject to detention under 8 U.S.C. § 1231(a)(6) is entitled to review of his custody status by DHS officials prior to the expiration of the removal period, and at annual intervals thereafter, with the alien having a right to request interim reviews every three months. See 8 C.F.R. §§ 241.4(k)(1), 241.4(k)(2)(iii).

III. Withholding-Only Proceedings.

There are two paths for seeking withholding of removal. *Johnson v. Guzman Chavez*, 141 S.Ct. 2271, 2282 (2021). First, the alien may seek statutory withholding under § 1231(b)(3)(A), which provides that "the Attorney General 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 the alien's race, religion, nationality, membership in a particular social group, or political opinion." *Id.* Second, the alien may seek withholding under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 113, which prohibits removal of an alien to a country where the alien is likely to be tortured. *Id.*

The process for applying for withholding of removal depends on whether the alien is subject to the standard removal proceedings or a reinstated order of removal. *Id.* An alien subject to the standard removal process typically applies for withholding during the course of his removal proceedings. *Id.* If an alien is granted withholding only relief, DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated. *Guzman-Chavez* at 2283. But because withholding of removal is a form of "country specific" relief, nothing prevents DHS "from removing [the] alien to a third country other than the country to which removal has been withheld or deferred." *Id.* quoting *INS v. Cadoza-Fonseca*, 480 U.S. 421, 428, n. 6 (1987).

LEGAL ANALYSIS

I. Sagastizado can be Removed to another Country other than El Salvador.

Sagastizado's grant of Withholding of Removal to El Salvador does not prevent his removal to another country. The fact that alternative country removal is rare does not make it statutorily unauthorized, and withholding-only relief does not afford an alien any permanent right to remain in the United States. *Guzman-Chavez* at 2286. If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States. *Id.* at 2285. The removal order is not vacated or otherwise set aside. *Id.* It remains in full force, and DHS retains the authority to remove the alien to any other country authorized by statute. *Id.* And the statue provides numerous options: a country designated by the alien, the alien's country of citizenship, the alien's previous country of residence, the alien's country of birth, the country from which the alien departed for the United States, and finally, any country willing to accept the alien. *Id.* In Sagastizado's case, the Government of Mexico has agreed to accept his repatriation to facilitate his removal from the United States. See Exhibit D.

II. Sagatizado's Detention under 8 U.S.C. § 1231(a)(6) Comports with Limitations Imposed in *Zadvydas*.

Sagastizado's present detention is presumptively reasonable under *Zadvydas*, and his prolonged detention claim is premature and fails to state a claim. Sagastizado is subject to a final order of removal as of February 22, 2024. See Exhibit B. Following the entry of his removal order, and the granting of withholding of removal to El Salvador, he was detained for a period of 75 days during the mandatory 90-day removal period until May 6, 2024, when he was released on an Order of Supervision. See Exhibit C. The Immigration and Nationality Act (INA) further provides that aliens like Sagastizado, who are inadmissible under 8 U.S.C. § 1182 may be detained beyond the 90 – day period pending removal. See 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(a)(1), (4). Sagastizado was found to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). See Exhibit B. He was recently re-detained on May 6, 2025, pending execution of the final removal order. See Exhibits D & E. Consequently, ICE had detained Sagastizado for a total of 126 days when he filed his Petition in this Court on June 25, 2025 (75 days from February 22, 2024, to May 6, 2024, and 51 days from May 6, 2025, to June 25, 2025).

In *Zadvydas*, the Supreme Court held that Section 1231 (a)(6) "read in light of the Constitution's demands, limits an alien's post-removal period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 553 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. In *Zadvydas*, the Court identified six months as a presumptively reasonable period of post-order detention, but made clear that the presumption does not mean that all aliens not ordered removed must be released after six months.

For an alien to establish a prima facie claim for habeas relief under *Zadvydas*, the alien must first establish that he has been in post-order custody for more than six months at the time the habeas petition is filed. *Agyei-Kodie v. Holder*, 418 F.App'x 317, 318 (5th Cir. 2011). Then, the alien must provide a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. *Andrade v. Gonzalez*, 459 F.3d 538, 543-44 (5th Cir. 2006) ("The aliens bears the initial burden of proof in showing that no such likelihood of removal exists. In the instant case Andrade has offered nothing beyond his conclusory statements suggesting that he will not be immediately removed to Cape Verde following resolution of his appeals. His constitutional claim is meritless."); *Akinwale v Ashcroft*, 287 F.3d 1050, 1052 (11th Cir 2002) ("Therefore, in order to state a claim under *Zadvydas*, the alien must not only show the post-removal order detention in excess of six months but must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.");

Kahn v. Fasano, 194 F.Supp.2d 1134, 1136 (S.D. Cal. 2001).

The "reasonably foreseeable future" is not a static concept. Instead, it is fluid and country-specific, significantly depending on the diplomatic relations between the United Staes and the country that will receive the removed alien. The processes for obtaining a temporary travel document from another country are complex, multi-faceted, and include considerations of diplomacy that are beyond the control of ICE. The Northern District of Georgia has explained:

> Clearly, it is no secret that the bureaucracies of second and third world countries, and not a few first world countries, can be inexplicably slow and counter-intuitive in the methods they employ as they lumber along in their decision-making. To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back to the hinterlands, simply because his native country is moving slow, would mean that the United States has effectively ceded its immigration policy to those other countries. The Court does not read the holding of *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002).

Moreover, even a "lack of visible progress ... does not in and of itself meet [the petitioner's] burden of showing that there is no significant likelihood of removal." *Id.* at 1366. "It simply shows that the bureaucratic gears of the [federal immigration agency] are slowly grinding away." *Khan*, 194 F.Supp.2d at 1137; *Idowu v. Ridgs*, No. 3:03-cv-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003).

"*The burden is on the alien to show that there is no reasonable likelihood of repatriation.*" *Khan*, 194 F.Supp.2d at 1136 (emphasis added). Mere conclusory allegations are insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-cv-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-cv-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004). The Northern

District of Texas has clarified:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular and individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4; *see also Akinwale*, 287 F.3d at 1052; *Ali v. Gomez*, No. SA-11-CA-726-FB, 2012 WL 13136445, *6 (W.D. Tex. March 14, 2012) ("But, within the context of *Zadvydas*' analytical framework, petitioner has offered only 'conclusory statements' to show he will not immediately be removed to Pakistan following the resolution of his administrative actions that are preventing his removal (unless he is granted a withholding of removal)."). If the alien does "provide[] 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." *Zadvydas*, 533 U.S. at 701.

III. This Court is deprived of Jurisdiction to review claims regarding the execution of removal orders under 8 U.S.C. § 1252.

To the extent that Sagastizado is challenging Respondents' ability to effectuate his final order of removal, the claim is jurisdictionally barred. The jurisdiction of federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Courts "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (internal citations omitted). Relevant to this case is the Immigration Reform and Immigrant Responsibility Act (IIRIRA). Several of the IIRIRA's provisions—as well as provisions of the REAL ID Act of 2005, which refined IIRIRA's judicial review scheme—deprive this Court of jurisdiction over this matter.

First, 8 U.S.C. § 1252(g) deprives the Court of jurisdiction to review claims arising from the three discrete actions identified in § 1252(g), including the execution of removal orders. [4] Congress spoke clearly and emphatically providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under § 2241 of claims relating to a decision to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).

Circuit courts of appeals that have addressed the issue have held that § 1252(g) eliminates subject matter jurisdiction over habeas challenges, including constitutional claims, to an arrest or detention for the purposes of executing a final order of removal. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding that it lacked jurisdiction over noncitizen's habeas challenge to the exercise of discretion to execute his removal order); *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."); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute"); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims

4 Specifically, 8 U.S.C § 1252(g) provides: "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."

arising from the execution of a final order of removal, and language barring "*any* cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Elgharib v. Napolitano*, 600 F.3d 597, 602 (6th Cir. 2010) ("[A] natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution." (quoting 8 U.S.C. § 1252(g))); *see also Duamutef v. INS*, 386 F.3d 172, 181-82 & n.8 (2d Cir. 2004) (holding that district court lacked mandamus jurisdiction due to § 1252(g) to compel ICE to take custody over state prisoner and execute final removal order, but declining to address whether § 1252(g) barred habeas claims); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal based claims and remanding with instructions to dismiss those claims); *see also Westley v. Harper*, Civ. Action No. 25-229, 2025 WL 592788, at *4–6 (E.D. La. Feb. 24, 2025) (rejecting petitioner's argument that *Zadvydas* challenges are not precluded by Section 1252(g)).

Second, to the extent there was any question about the Court's lack of jurisdiction, the REAL ID Act's amendments to Section 1252(b)(9) should eliminate them. The amendments provide that "[j]udicial review of *all questions of law and fact*, including interpretation and application of constitutional and statutory provision, *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). Accordingly, "the sole and exclusive means for judicial review" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). Thus, to the extent there was any question that this Court lacked subject matter jurisdiction, Congress answered that question by divesting district courts of jurisdiction over such matters and vested review in only the courts of appeals. *Id.* These provisions sweep more broadly than Section 1252(g) and make clear the Court lacks jurisdiction to hear this challenge to Sagastizado's detention, which is an action taken as part of the process of removing him from the United States.

CONCLUSION

Sagastizado's Petition should be dismissed. Despite having been granted withholding of removal to El Salvador, his removal order remains in full force, and he can be removed to another country. Sagastizado also fails to establish a prima facie claim for habeas relief under *Zadvydas*, as his post-removal order detention totaled less than six months at the time that he filed his Petition in this Court. Moreover, aside from conclusory allegations, he cannot establish that there is no significant likelihood of his removal from the United States in the reasonably foreseeable future. Finally, to the extent that Sagastizado is challenging the government's ability to effectuate his final order of removal through his petition, this Court has no jurisdiction to review that claim.

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

"S/" Hector C. Ramirez
HECTOR C. RAMIREZ
Assistant United States Attorney
State Bar I.D. #16501850
Fed. Adm. #18155
11204 McPherson Road
Suite 100A
Laredo, Texas 78045
Tel.: (956) 723-6523
Email: hector.ramirez@usdoj.gov
ATTORNEY IN CHARGE
FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENTS' MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** in the case of ISRAEL ADONAY SAGASTIZADO SANCHEZ v. KRISI NOEM, ET AL, Civil Action Number 5:25-CV-104, was sent to Simon Y. Sandoval-Moshenberg, Murray Osorio PLLC, 4103 Chain Bridge Road, Suite 300, Fairfax, Virginia 22030, by electronic mail through the District Clerk's electronic case filing system, on this the 8th day of August, 2025.

"S/" Hector C. Ramirez
HECTOR C. RAMIREZ
Assistant United States Attorney