IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ALEM WOLDEGHERGISH, Petitioner, v. ROBERT LYNCH, ICE Field Office Director, Enforcement and Removal Operations Detroit, *et al.*, Respondents.	Case No. 1:25-cv-00461 District Judge Susan J. Dlott Magistrate Judge Karen L. Litkovitz

RETURN OF WRIT

Petitioner Alem Woldeghergish is currently in U.S. Immigration and Customs Enforcement ("ICE") custody in Butler County, Ohio pending removal pursuant to the Immigration and Nationality Act ("INA") § 241(a) (8 U.S.C. § 1231(a)). (Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 ("Petition"), Doc. 4, PageID 12, 14.) Petitioner's detention pending removal is constitutionally and statutorily permissible. For this and other reasons discussed below, this Court should deny the Petition.

A memorandum follows.

INTRODUCTION

Alem Woldeghergish ("Petitioner") is a native and citizen of Eritrea, unlawfully in the United States. (Petition, Doc. 4, PageID 15, ¶12; Declaration of Luke Affholter

("ICE"), Exhibit A, at 2, ¶¶4, 8.) Petitioner entered the United States in 2017 and found to be inadmissible and processed for expedited removal. (ICE Decl., Ex. A, at 2, ¶4; Removal Order, Ex. B, at 1-2.) He submitted an application for asylum and withholding, but on April 11, 2018, Petitioner's asylum application was denied. (Petition, Doc. 4, PageID 15, ¶¶12-13; ICE Decl., Ex. A, at 2, ¶¶4-5; Removal Order, Ex. B.) Petitioner is currently in ICE custody in Butler County, Ohio. (ICE Decl., Ex. A, at 1-2, ¶§3.) Petitioner is currently awaiting removal from the United States to Eritrea, or Malta, in the alternative. (*Id.* at 2, ¶6.)

Petitioner claims that he is not subject to detention and his detention violates his 5th Amendment Due Process rights under the United States Constitution. (Petition, Doc. 4, PageID 16-17, ¶¶24-27.) Petitioner also claims his detention is unlawful pursuant to 8 U.S.C. § 1231. (*Id.* at PageID 17-18, ¶¶28-36.) Petitioner also claims he has exhausted administrative remedies. (*Id.* at PageID 13-14, ¶6.)

Petitioner seeks release on bond while awaiting removal. (*Id.* at PageID 18, Prayer For Relief, ¶4.) Petitioner also seeks additional relief, including attorneys' fees. (*Id.* at Prayer For Relief.)

Federal Respondents oppose Petitioner's release and respectfully request this Court deny or dismiss the Petition. Petitioner's detention is lawful because he has been ordered removed. *See* 8 U.S.C. § 1231(a). This Court is without jurisdiction to review orders of removal and Petitioner has failed to exhaust his administrative remedies.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner has been in the United States since 2017 without having been admitted or paroled, found to be inadmissible under section 1182 of the INA and processed for expedited removal. (ICE Decl., Ex. A, at 2, ¶4; 2018 Removal Order, Ex.B, at 1-2.) Petitioner applied for asylum and withholding but his asylum and withholding application was denied. (Petition, Doc. 4, at PageID 15, ¶¶12-13; ICE Decl., Ex. A, at 2, ⁋⁋4-5.)

On April 11, 2018, Petitioner was ordered removed by an Immigration Judge in Port Isabel, Texas. (Petition, Doc. 4, PageID 14, ¶6; ICE Decl., Ex. A, at 2, ⁋6; Removal Order, Ex. B.)) Petitioner was detained pending removal but released on August 8, 2018. (Petition, Doc. 4, PageID 14, ⁋6.)

On June 10, 2025, Petitioner was arrested and detained at the Butler County Correctional Complex in Hamilton, Butler County, Ohio. (Petition, Doc. 4, PageID 14, ¶6.) Petitioner has been ordered removed and is detained pending removal. (*Id.* at 2, ⁋6; *see* 8 U.S.C § 1231(a)(6)).

On July 3, 2025, Petitioner filed this Petition for Writ of Habeas Corpus. (Petition, Doc. 4, PageID 12-19.)

Petitioner argues that his detention pending removal is in violation of the Fifth Amendment to the United States Constitution's right to procedural due process. (Petition, Doc. 4, PageID 16-17, ⁋⁋25-27.) Petitioner also claims that his detention violates 8 U.S.C. § 1231(a) because the 90-day statutory removal period expired years ago. (*Id.* at PageID 17-18, ⁋⁋28-36.)

Petitioner's arguments are without merit.

ARGUMENT

I. This Court Lacks Subject-Matter Jurisdiction.

The Court should dismiss Plaintiff's action for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1). Motions to dismiss under Rule 12(b)(1) fall into two general categories: facial attacks and factual attacks. *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994); *Ohio National Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). A facial attack to jurisdiction questions the sufficiency of the pleadings and is resolved using the familiar Rule 12(b)(6) standard; that is, the Court takes the material allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See Scheuer v. Rhodes*, 416 U.S. 232, 235-37 (1974) (overruled on other grounds).

In contrast, with a factual attack to subject matter jurisdiction, there is no presumptive truthfulness to the allegations made by plaintiffs. *RMI Titanium Co. v. Westinghouse Electric Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996); *Ritchie*, 15 F.3d at 598; *Moir v. Greater Cleveland Regional Transit Auth.*, 896 F.2d 266, 269 (6th Cir. 1990). In considering such a challenge, the Court must weigh the evidence to determine whether jurisdiction exists. *Id.*; *DXL, Inc. v. Kentucky*, 381 F.3d 511, 516 (6th Cir. 2004) (citations omitted). In this regard, the Court has wide discretion to allow affidavits, documents or even a limited evidentiary hearing to aid in resolving disputed jurisdictional facts. *Nichols v. Muskingum College*, 318 F.3d 674, 677 (6th Cir. 2003); *Ohio National Life, Ins.*, 922 F.2d at 325; *see also, Land v. Dollar*, 330 U.S.

731, 735 n. 4 (1947) (holding that "when a question of the district court's jurisdiction is raised . . . the court may inquire by affidavits or otherwise, into the facts as they exist").

The plaintiff bears the burden of proving that subject matter jurisdiction exists. *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005); *DXL, Inc. v. Kentucky*, 381 F.3d at 516; *RMI Titanium*, 78 F.3d at 1134; *Moir*, 896 F.2d at 269.

A Rule 12(b)(1) motion, when accompanied by evidentiary support, is not converted into a motion for summary judgment, and the court is empowered to resolve factual disputes. *Moir*, 895 F.2d at 269; *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986).

In this case, the Defendants' Motion to Dismiss presents both a facial and a factual challenge, under Rule 12(b)(1), to the Court's subject matter jurisdiction. "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. "The remedy of mandamus is a drastic one, to be invoked only in extraordinary circumstances." *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016) (quotation marks omitted). "To show entitlement to mandamus, plaintiffs must demonstrate (1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists." *Id.* "These three threshold requirements are jurisdictional; unless all are met, a court must dismiss

the case for lack of jurisdiction." *Id; see also Norton v. S. Utah Wilderness All.*, 542 U.S. 55 (2004).

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests whether that plaintiff has pleaded a cognizable claim in his or her complaint. "To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F.3d 315, 319 (6th Cir. 1999) (internal quotation omitted).

A court should dismiss a claim under Rule 12(b)(6) when the plaintiff has failed to plead sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff [has pleaded] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). A complaint need not contain detailed factual allegations but must raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555.

The Court should deny the Petition because this Court lacks subject-matter jurisdiction his claims because 8 U.S.C. § 1252, et seq., precludes the review. Even if the Court had jurisdiction, Petitioners still fail to plead plausible claims for relief.

A. 8 U.S.C. § 1252, et seq. Precludes Review of Petitioners' Claims.

The jurisdiction of the federal courts is presumptively limited. *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.* (internal citations omitted). As relevant here, in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which included provisions intended to deprive district courts of jurisdiction over removal-based claims. Then, in 2005, Congress amended § 1252 through the Real ID Act to ensure that all review of final orders of removal would be channeled to the courts of appeals. Although this court may have jurisdiction over Petitioners' habeas petition, federal district courts lack jurisdiction to address any claims for which [Petitioner] requests review of final orders of removal. 8 U.S.C. § 1252(a)(5) (Review of BIA final orders "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.")

B. Section 1252(g) Bars Review of Petitioners' Claims.

Section 1252(g) bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." Congress spoke clearly, emphatically, and repeatedly, 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 the All Writs Act. 8 U.S.C. § 1252(g).

Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) 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).

Petitioner's claims plainly arises from ICE's actions to execute his removal order. Petitioner claims, inter alia, that he should be released on bond during the pendency of these proceedings. (Petition, Doc. 4, PageID 18, ¶¶4-5.)

However, these claims are barred by 8 U.S.C. § 1252(g); *see also 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 Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *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."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS's legal authority as opposed to its "discretionary decisions"); *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") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims 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"); *Poghosyan v. U.S. Dep't. of Homeland Security*, Case No. 2:25-cv-03091, 2025 WL 1287771 (C.D. Cal. May 1, 2025) (on appeal); *Rranxburgaj v. Wolf*, 825 Fed. Appx. 278 (6th Cir. 2020) ("[t]he decision to deny a temporary stay of removal arises directly from the decision of the Attorney General to execute a removal order, so it is rendered unreviewable by § 1252(g).).

Petitioner's claim arises from ICE's discretionary decision to execute his removal order. This discretion includes whether and when to do it. *See, e.g., Tazu v. Att'y Gen.*, U.S., 975 F.3d at 297. The fact that Petitioner is in detention because he is inadmissible pursuant to § 1182 and can be detained pursuant to § 1231(a)(6), is incidental to the execution of his removal orders. Therefore, this Court should deny Petitioner's motion seeking to interfere with his removal.

C. Section 1252(a)(5) and (b)(9) Bar Review of Petitioners' Claims.

This Court also lacks jurisdiction over Petitioners' claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

> 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.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . 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 . . ."

In relation to section 1252(a)(9), the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, *5 (S.D. Ohio Jan. 3, 2017). In fact, the First Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

Petitioner could appeal his removal order pursuant to the administrative process, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c), or seek an emergency stay of removal as a part of the administrative process. *See generally* 8 C.F.R. § 1003.2(f), 1003.23(b)(v).

Because Petitioner requested relief arises from and "action taken . . . brought to remove" Petitioner "from the United States" and is a petition for habeas corpus, this court lacks jurisdiction and should be dismissed. § 1252(b)(9).

II. Petitioner Fails to State a Claim.

A. Petitioner is Lawfully Detained Pending Removal.

Petitioner's claim that he is unlawfully detained beyond the removal period without justification is without merit. (Petition, Doc. 4, PageID 16-18.)

Title 8 U.S.C. § 1231(a)(1)(A) provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." Section 1231(a)(3) provides that if the alien is not removed during the 90-day period, the alien "shall be subject to supervision." However, under the extended removal period, detention is mandatory. 8 U.S.C. § 1231(a)(1)(C). A non-citizen can be detained beyond the removal period if the non-citizen, who has been ordered removed, is inadmissible under section 1182. 8 U.S.C. § 1231(a)(6). Specifically, § 1231(a)(6) provides that an inadmissible alien under section 1182 "may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6); s*ee e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 541 (2021) (recognizing certain groups of aliens may be detained pursuant to §1231(a)(6) beyond the removal period).

In *Zadvydas v. Davis*, the Supreme Court interpreted Section 1231(a)(6), the provision that allows for detention beyond the removal period, to limit post-removal-period detention to a period "reasonably necessary to bring about the alien's removal from the United States." 533 U.S. 678, 689 (2001). The Court held that post-removal-order detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, if removal is no longer reasonably foreseeable, continued detention is not authorized by the statute. *Id.* at 699.

The burden is on the petitioner to show his removal is unlikely, as an alien may be detained beyond six months unless the "alien provides good reason to conclude there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future in a habeas corpus petition, the government must respond with evidence sufficient to rebut that showing. *Id.*

In *Zadvydas*, the Court emphasized that the "basic purpose" of immigration detention is "assuring the alien's presence at removal" and concluded this purpose was not served by the continued detention of aliens whose removal was not "reasonably foreseeable." *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas* because no country would accept the deportees or the United States lacked an extradition treaty with their receiving countries.

The Supreme Court's rulings in this area, however, do not require the government to release every alien who has been in detention for more than six months. To the contrary, in *Zadvydas*, the Court held:

> 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. at 701 (emphasis added).

Similarly, in *Clark v. Martinez*, an alien's removal to Cuba was not reasonably foreseeable when the government conceded "that it is no longer even involved in repatriation negotiations with Cuba." 543 U.S. 371, 386 (2005). In both cases, the Court recognized that the government's purported interest in detaining an alien was severely diminished when there is no significant likelihood that the alien could be removed. *See Demore v. Kim*, 538 U.S. 510, 527 & n.10 (2003) (observing that detentions at issue in *Zadvydas* did not serve a feasible immigration purpose). The "indefinite and potentially permanent" civil detention of such an alien would clearly pose serious substantive due process concerns. *See Zadvydas*, 533 U.S. at 696. Because Congress did not clearly intend "to authorize long-term detention of unremovable aliens," however, the Court held that this constitutional threat could be avoided by construing the statute as not authorizing detention once removal is no longer reasonably foreseeable. *Id.* at 697-99.

To state a claim under *Zadvydas*, the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 701.

Here, Petitioner's detention is statutorily and constitutionally permissible. Petitioner cannot make a claim under *Zadvydas*. Petitioner's assertion that he will not be removed from the United States in the reasonably foreseeable future is premature. Petitioner must be detained for a period of six months before his detention can be found impermissible pursuant to *Zadvydas*, that is, there "is no

significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

While there may be a limitation on the length of detention, there is no limitations period under 1231(a)(6). *See e.g., Ghamelian v. Baker*, Case No. 25-02106, 2025 WL 2049981, *4 (D. Maryland July 22, 2025) (slip copy). In *Ghalmelian v. Baker*, the inadmissible petitioner claimed that his detention pending removal pursuant to § 1231(a)(6), like here, violated his § 1231(a)(6) and his due process rights under the United States Constitution and *Zadvydas v. Davis*, 533 U.S. 678, 687, 689-90 (2001), because the removal period had expired. *Id.* at *3; (Petition, Doc. 4, PageID 17-18, §§28-36.) The District Court in Maryland correctly observed that "*Zadvydas* addressed . . . [whether] the length of" detention pursuant to § 1231(a)(6) offends "due process rights." Specifically, *Zadvydas* "imposed a six-month presumption of constitutional detention," but further detention beyond six months is impermissible if "it has been determined that there is no significant likelihood of removal in the reasonable foreseeable future." *Ghamelian*, at *4 (citing *Zadvydas*, 533 U.S. at 701).

This Court should conclude, as the district court in *Ghamelian* concluded, that "neither the language of § 1231(a)(6) nor *Zadvydas* supports the notion that the government's ability to detain" Petitioner has expired."" *Ghamelian*, at *4. Unfortunately, Petitioner's good conduct under supervision, like the petitioner Ghamelian in his case, does not help him here. *See Ghamelian*, at *4.

Based upon the above, Petitioner's argument that he is detained in violation of the Fifth Amendment to the United States Constitution and §1231(a)(6) fails.

III. Petitioner Failed to Exhaust his Administrative Remedies.

An alien detained seeking habeas corpus jurisdiction must first exhaust all administrative remedies prior to requesting relief in federal court. *See Leonardo v. Crawford*, 546 F.3d 1157, 1160-61 (9th Cir. 2011) (district court should have dismissed, without prejudice, a habeas challenge to an immigration judge's bond ruling where the petitioner failed to seek review of the bond ruling by the BIA prior to filing his habeas petition).

In the immigration context, authorities have held that courts can "waive the judge-made exhaustion requirement when (1) a long exhaustion process would create undue prejudice, (2) an administrative remedy is inadequate, such as when an agency lacks the authority to resolve the constitutionality of a statute, and (3) the appeal would be futile because the agency has 'predetermined the issue before it.'" *Hernandez v. Prindle*, Civil No. 15-10-ART, 2015 U.S. Dist. LEXIS 48091, at *3 (E.D. Ky. Apr. 13, 2015) (citing *McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992)).

Further, Petitioner cannot meet any of these conditions to waive the exhaustion requirements because his removal order has been final for seven years.

Petitioner has not exhausted his administrative remedies as required. *See Cardoso v. Reno*, 216 F.3d 512, 518 (5th Cir. 2000); *see also Wang v. Ashcroft*, 260 F.3d 448, 452-53 (5th Cir. 2001). As a result, this Petition should be dismissed and denied.

CONCLUSION

Based upon the above, the Federal Respondents respectfully request that this Court deny the Petition for a Writ of Habeas Corpus.

Respectfully submitted,

KELLY A. NORRIS
Acting United States Attorney

s/William B. King II
WILLIAM B. KING II (0094046)
Assistant United States Attorney
Attorney for Defendant
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
Office: (513) 684-3711
Fax: (513) 684-6972
E-mail: Bill.King@usdoj.gov