UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED

AUG 28 2025

NATHAN OCHSNER
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

THO DUC HUYNH, *Petitioner,*	§	
v.	§	CIVIL ACTION NO. 1:25-cv-00156
FRANCISCO VENEGAS, Warden of El Valle Detention Facility,	§	

GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

The Government[1] files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. No. 1) and pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) and 12(b)(6) moves to dismiss the Petition for lack of subject matter jurisdiction or failure to state a claim. As explained below, Petitioner's claim for habeas relief should be denied because he is lawfully detained and through Petitioner's own action(s) in refusing to cooperate with ICE in obtaining travel documents and in filing litigation challenging his longstanding removal order, Petitioner has prolonged his detention and delayed his removal to Vietnam in the near future.

SUMMARY OF THE ARGUMENT

1. Petitioner Tho Duc Huynh was born in Vietnam and is currently in custody of ICE since January 31, 2025. The Petitioner has been convicted of a crime involving moral turpitude, namely sexual battery, and has been ordered removed from the United States. During his detention,

[1] As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). Since the filing of this Petition, Petitioner has remained in the U.S. Immigration and Customs Enforcement ("ICE") federal facility in Raymondville, Willacy County, Texas. **Gov't Ex. 1, ¶ 3** (Unsworn Declaration of ICE Deportation Officer Ruben Ramirez); *see also* Dkt. No. 3 at 3. The warden of that facility is Francisco Venegas. That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

ICE has been working to obtain the necessary travel documents and schedule his removal to Vietnam. As of April 30, 2025, Petitioner has refused to help with efforts to obtain travel documents from Vietnam, prolonging his detention at El Valle Detention Facility in Raymondville, Willacy County, Texas. Petitioner will be removed upon approval and receipt of travel documents for Petitioner from Vietnam.

2. Despite his criminal history and his own actions in prolonging his detention and delaying his removal to Vietnam, Petitioner claims violation of his rights under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, the Fifth Amendment Due Process Clause, and other various federal statutes and case law. In support of this claim, he asserts that his removal has not occurred since his final removal order became final in October 2004 and Petitioner alleges there is no significant likelihood that he will be removed to Vietnam in the reasonably foreseeable future.

3. However, at issue here is Petitioner's continued detention by ICE which commenced on January 31, 2025. The sole fact that a removal has not occurred within six months since his January 31, 2025—the issue before the Court—is not itself a violation of the law. Rather, the Court must consider available facts to determine whether Petitioner's removal to Vietnam is reasonably foreseeable. The petition should be dismissed as Petitioner has failed to state a claim that his continued detention pending removal to Vietnam is unlawful under *Zadvydas* or 8 U.S.C. § 1231(a)(1)(A). Further, the petition should be dismissed for failure to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241. Petitioner thus fails to demonstrate how his continued detention amounts to a constitutional violation and his petition should be denied.

THE NATURE AND STATE OF THE PROCEEDING

4. On July 14, 2025, Tho Duc Huynh filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (the "Petition"), challenging his continued detention by ICE at El Valle Federal Facility.[2] The Petitioner claims that his continued detention past six months violates: (1) 8 U.S.C. § 1231(a)(1)(A) of the INA and *Zadvydas v. Davis*, 533 U.S. 678 (2001); (2) the Due Process Clause of the Fifth Amendment; (3) federal regulations under 8 C.F.R. §§ 241.4, 241.13. Dkt. No. 1, ¶¶ 44-54. The Court ordered a response explaining why the writ of habeas corpus should not issue. Dkt. No. 3 at 3.

AUTHORITY BY WHICH PETITIONER IS HELD

5. Petitioner is being detained pursuant to a final removal order and the January 31, 2025 issuance of a Warrant of Removal/Deportation by ICE. **Gov't Ex. 1,** ¶¶ 5-10; *see* **Gov't Ex. 2** (Immigration Judge's Decision and Order, July 23, 2003, *In the Matter of Tho Duc Huynh*); **Gov't Ex. 3** (ICE Form I-205, Jan. 31, 2025 Warrant of Removal/Deportation). Petitioner was ordered removed from the United States in 2003 by an Immigration Judge after the Circuit Court of the County of Chesterfield in the Commonwealth of Virginia convicted Petitioner of sexual battery and sentenced Petitioner to a period confinement of 12 months, constituting an aggravated felony as defined by Congress in Section 101(a)(43)(F) of the INA (8 U.S.C. § 1101(a)(43)(F)). **Gov't Ex. 2** at 2-3. After ICE issued Petitioner an Order of Supervision on June 4, 2007 (**Gov't Ex. 4**), which allowed Petitioner to be released under certain conditions acknowledged by Petitioner, ICE detained Petitioner on January 31, 2025 after a Warrant of Removal/Deportation was issued for Petitioner. **Gov't Ex. 1,** ¶¶ 9-10. Petitioner's removal to Vietnam is proper under Section 237(a)(2)(A)(iii) of the INA (8 U.S.C. § 1227(a)(2)(A)(iii)) as Petitioner deportable

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[2] The Government notes that the Petition is in violation of FRCP 11(a) as it is not "signed by at least one attorney of record in the attorney's name[.]" Fed. R. Civ. P. 11(a); *see* Dkt. No. 1 at 13.

because he was convicted in 1998 of an aggravated felony.[3] **Gov't Ex. 1,** ¶¶ 5-10; **Gov't Ex. 3** at 1.

6. On February 4, 2025, ICE transferred Petitioner to El Valle Detention Facility in Raymondville, Texas. *Id.*, ¶ 11. On March 24, 2025, ICE served Petitioner with a Notice to Alien of File Custody Review (**Gov't Ex. 5**) and Notice to Alien of Interview for Review of Custody Status (**Gov't Ex. 6**), scheduling his interview on March 26, 2025, to determine whether Petitioner should be released from ICE custody. **Gov't Ex. 1**, ¶ 12; *see* **Gov't Exs. 5** at 1-2; **6** at 2-3. On April 16, 2025, ICE issued a decision on his continued detention pursuant to 8 C.F.R. § 241.4, stating that ICE would maintain custody of him. **Gov't Ex. 1**, ¶ 13; **Gov't Ex. 6** at 1 (Decision to Continue Detention, Apr. 16, 2025).

7. On April 29, 2025, ICE made a Request for Travel Documents from Vietnam for Petitioner (**Gov't Ex. 7**), which remains pending. **Gov't Ex. 1,** ¶ 14. On April 30, 2025, Petitioner refused to help with efforts to obtain Travel Documents from Vietnam. *Id.*, ¶ 15. Petitioner will be removed to Vietnam upon approval of request and receipt of Travel Documents. *Id.*, ¶ 14.

RELEVANT BACKGROUND

8. As stated in the Petition, the Petitioner was born in Vietnam and in 1992, was admitted into the United States as a Lawful Permanent Resident. Dkt. No. 1, ¶¶ 10-11; **Gov't Ex. 1,** ¶ 4; **Gov't Ex. 8** at 3 (Petitioner's Record of Deportable/Inadmissible Alien, Jan. 31, 2025).

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[3] Given that Petitioner is a deportable alien because of his 1998 criminal conviction of an aggravated felony of sexual battery, ICE is unaware that Petitioner qualifies as a class member, or is entitled to relief, under *Trinh v. Homan*, No. 8:18-cv-00316-CJC-GJS (C.D. Cal. 2021) referenced in the Petition (Dkt. No. 1, ¶ 24) and in the Court's July 22, 2025 Order (Dkt. No. 3 at 2, n.1). Furthermore, as to Petitioner's June 2, 2025 appeal to the U.S. Court of Appeals for the Fourth Circuit of the Board of Immigration Appeal's ("BIA") May 16, 2025 denial of a motion to reopen his 2003 removal order (Dkt. No. 1, ¶¶ 26-28; Dkt. No. 3 at 2, n.1), the stay of removal does not impact the Court's authority to deny relief under 28 U.S.C. § 2241; rather, as discussed in this Motion, *infra* at 11, ¶ 21, Petitioner's voluntary challenge of the 2003 removal order prolongs his detention and delays his removal, thereby "equitably tolling the six-month detention period" at El Valle Detention Facility. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 850 (S.D. Tex. 2016) (Rosenthal, J.).

However, after his 1998 conviction for sexual battery, he was ordered removed in July 2003. **Gov't Ex. 1**, ¶¶ 5-10; **Gov't Ex. 3** at 1-3. The removal order became final on October 5, 2004 after BIA denied Petitioner's appeal of the Immigration Judge's 2003 removal order. Dkt. No. 1, ¶ 14; Gov't Ex. 1, ¶¶ 5-10. ICE issued an Order of Supervision on June 4, 2007, which allowed Petitioner to be released under certain conditions, to include, among others, appearing at time and places specified by ICE for identification, and that he continue to "make good faith and timely efforts to obtain travel document and assist ICE in obtaining a travel document." **Gov't Ex. 4** at 3-4.

9. On January 31, 2025, ICE issued a Warrant of Removal/Deportation against Petitioner and arrested him at his place of employment and transported him to the ICE Baltimore Field Office without incident. **Gov't Ex. 8** at 3; **Gov't Ex. 3** at 1. After being transferred to El Valle Detention Facility in Raymondville, Texas, and within 35-37 days from Petitioner's detention, ICE conducted a custody review and interview of Petitioner to determine whether Petitioner should be released from ICE custody pending removal to Vietnam. **Gov't Ex. 1**, ¶¶ 10-12; **Gov't Ex. 5**; **Gov't Ex. 6** at 2-3. Petitioner was subsequently personally served Form I-229(a) (Warning for Failure to Depart) (**Gov't Ex. 9**) on April 9, 2025, informing Petitioner of his obligations to assist ICE in good faith with travel applications or other documents necessary to the Petitioner's departure; the Petitioner refuse to sign the Warning for Failure to Depart. *See* **Gov't Ex. 9** at 1-2.

10. On April 16, 2025, 51 days after his initial detention, ICE issued a decision on his continued detention pursuant to 8 C.F.R. § 241.4, stating that ICE would maintain custody of him. **Gov't Ex. 1**, ¶ 13; **Gov't Ex. 6** at 1. On April 29, 2025, ICE made a Request for Travel Documents from Vietnam for Petitioner (**Gov't Ex. 7**), which remains pending. **Gov't Ex. 1**, ¶ 14. On April 30, 2025, Petitioner refused to help with efforts to obtain Travel Documents from Vietnam. *Id.*, ¶

15. Instead, as the Petition alleges, Petitioner applied to BIA to reopen his final removal order, which BIA denied on May 16, 2025. Dkt. No. 1, ¶¶ 26-28. Petitioner further appealed BIA's decision to the U.S. Court of Appeals for the Fourth Circuit, and obtained a stay of removal, "prohibiting removal pending his appeal to that Court." *Id.*, ¶ 28.

STANDARD OF REVIEW

A. Fed. R. Civ. P. 12(b)(1).

11. Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also id.* 12(h)(3)("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (quotations omitted); Fed. R. Civ. P. 12(h)(3). The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v. Lou–Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002). Accordingly, the party with the burden of proof must establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980). In ruling on a motion to dismiss for lack of subject matter jurisdiction, a court may rely on any of the following to decide the matter: "(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." *St. Tammany Parish, ex. rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009) (quotations omitted). A court must accept all factual allegations in the plaintiff's complaint as true. *Saraw Partnership v. United States*, 67 F.3d 357, 569 (5th Cir. 1995). "In considering a challenge to subject matter jurisdiction,

the district court is 'free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case.'" *Krim*, 402 F.3d at 494.

B. Fed. R. Civ. P. 12(b)(6).

12. A court may dismiss a claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). "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.* "The 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.* "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (brackets omitted)). "Threadbare recitals of the elements of a case of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Nor must a court accept as true "legal conclusions" or "a legal conclusion couched as a factual allegation." *Id.* at 678-79.

STATUTORY FRAMEWORK

13. 8 U.S.C. § 1231 governs the detention and release of a noncitizen, like Petitioner, who has been ordered removed. During the "removal period," which generally lasts 90 days, detention is mandatory. 8 U.S.C. § 1231(a)(2). The removal period is triggered by the latest of the following: (1) date the order of removal becomes administratively final; (2) if the removal order is judicially reviewed and if a court orders a stay of the removal, the date of the court's final order;

or (3) if the noncitizen is detained or confined (except under an immigration process), the date the noncitizen is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

14. If ICE is unable to remove the noncitizen during the removal period, DHS may continue to detain a certain noncitizen specified in the statute or release him under an order of supervision. *Id.* § 1231(a)(6). Additionally, it provides that the removal period "shall be extended beyond a period of 90 days and the alien may remain in detention during such extended 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." *Id.* § 1231(a)(1)(C).

ARGUMENT

A. Petitioner's Continued Detention Does Not Violate *Zadvydas*.

15. The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231, which provides in pertinent part that the Attorney General is afforded a 90-day period within which to remove an alien from the United States following entry of a final order of removal. *See* 8 U.S.C. § 1231(a)(1)(A). In addition, there is a "special statute [that] authorizes further detention if the government fails to remove the alien" during the removal period. *Zadvydas*, 533 U.S. at 682.

16. Specifically, under 8 U.S.C. § 1231(a)(6), the government has discretion to detain "[a]n alien ordered removed who is inadmissible under [8 U.S.C. § 1182]…beyond the removal period and, if released, shall be subject to [certain] terms of supervision…" *Id.* (quoting 8 U.S.C. § 1231(a)(6)). In *Zadvydas*, the Supreme Court held that § 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 the alien's removal from the United States. It does not permit indefinite

detention." *Zadvydas*, 533 U.S. at 689. The Court further reasoned that in "interpreting the statute [§ 1231(a)(6)] to avoid a serious constitutional threat, [it concluded] that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

17. The Court in *Zadvydas* designated six months as a presumptively reasonable period of post-order detention with a significant caveat:

> 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; *see Clark v. Martinez*, 543 U.S. 317, 386 (2005) (extending the Court's interpretation of 8 U.S.C. § 1231(a)(6) to inadmissible aliens). After the expiration of the six-month period, an alien is eligible for release but only if he shows "no such likelihood of removal exists." *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (citing *Zadvydas*, 533 U.S. at 701). Afterward, if the petitioner "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the federal government to either rebut that showing or release him. *Zadvydas*, 533 U.S. at 701; *see also* 8 C.F.R. § 241.13 (establishing the *Zadvydas* procedures).

18. Here, Petitioner challenges the lawfulness of Petitioner's continued detention by ICE holding him in custody beyond the 6-month presumptive reasonable period under *Zadvydas*. Dkt. No. 1, ¶¶ 44-46. For purposes of this Court's jurisdiction under 28 U.S.C. § 2241, the relevant time period in which Petitioner has been continually detained by ICE started on January 31, 2025, when Petitioner was arrested and taken into ICE custody. *See* **Gov't Ex. 1, ¶¶** 5-10; **Gov't Ex. 8** at 3; **Gov't Ex. 3** at 1. Under 8 U.S.C. § 1231, ICE must physically remove Petitioner form the United States within a 90-day removal; but even after the expiration of the 90-day period, ICE has discretion to continue detention for certain aliens. 8 U.S.C. § 1231.

19. Furthermore, under the regulations promulgated by the Attorney General to establish and implement a formal administrative process to review the custody of post-order aliens, like Petitioner, who remain detained beyond the removal period may present to ICE their claims that they should be released from detention because there is no significant likelihood that they will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and his detention will continue to be governed by the post-order detention standards. 8 C.F.R. § 241.13(g)(2).

20. Here, Petitioner alleges that there is no significant likelihood of removal in the foreseeable future. Dkt. No. 1, ¶¶ 44-46. However, ICE has properly extended Petitioner's detention under § 1231 and the applicable regulations due to the determination that he is likely to be removed in the reasonably foreseeable future as ICE has made a Request for Travel Documents from Vietnam for Petitioner, which remain pending as of April 29, 2025. *See* **Gov't Ex. 7**; **Gov't Ex. 1**, ¶ 14. The Petition, however, fails to due to its lack of specific allegation. When a petitioner fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006) (acknowledging the petitioner's initial burden of proof where claim under *Zadvydas* was without merit because it offered nothing beyond the petitioner's conclusory statements suggesting that removal was not foreseeable). In this case, the Petition fails to cite to any evidence, other than conclusory statements, that there is no significant likelihood of removal in the reasonably foreseeable future. Rather, the Petition states that "no significant likelihood of removal exists in the reasonably foreseeable future" because removal efforts have passed decades ago. Dkt. 1, ¶ 45. This conclusion alone does not lead to a reasonable inference that Petitioner has no significant

likelihood of removal in the foreseeable future. He does not otherwise provide any other "good reason" to challenge his detention.

21. Importantly, Petitioner despite his obligations to do so, he has refused to help with efforts to obtain Travel Documents from Vietnam and denied receipt or acknowledgement of ICE's Warning for Failure to Depart. *See* **Gov't Ex. 9** at 1-2; **Gov't Ex. 1,** ¶ 15. Instead, as the Petition alleges, the Petitioner has voluntarily challenged the 2003 removal order by appealing to the Fourth Circuit BIA's May 2025 denial of Petitioner's request to reopen BIA's 2004 final decision on removal. *See* Dkt. No. 1, ¶¶ 26-28. By failing to cooperate with ICE in obtaining Travel Documents for his removal to Vietnam and prolonging his detention at El Valle Detention Facility by appealing a removal order beyond the statutory deadline to do so, the Court should dismiss Petitioner's claim under *Zadvydas*. *See, e.g.*, *Lynch*, 156 F. Supp. 3d at 850 (finding litigation challenging petitioner's order of removal "has prolonged his detention and delayed his removal, equitably tolling the six-month detention period); *Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993) (holding that "if it is shown that petitioner by his conduct has intentionally prevented the INS from effecting his deportation, the six-month period should be equitably tolled until petitioner begins to cooperate with the INS in effecting his deportation or his obstruction no longer prevents the INS from bringing that about").

22. Petitioner has failed to state claim under *Zadvydas* as his petition does not establish that "no such likelihood of removal exists." *Andrade*, 459 F.3d at 543. Therefore, the Court should dismiss Petitioner's habeas action for failure to state a claim under *Zadvydas*.

B. Petitioner Failed to Exhaust his Administrative Remedies under 8 C.F.R. § 241.13.

23. In the alternative, the Court should dismiss Petitioner's habeas action for failure to exhaust administrative remedies. It is well settled that before a prisoner can bring a habeas petition

under 28 U.S.C. § 2241, administrative remedies must be exhausted. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (A federal prisoner must "exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241."); *see generally* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56977 (Nov. 14, 2001) (codified as 8 C.F.R. § 241.13). If the petitioner does not exhaust available remedies, the petition should be dismissed. *Id.*

24. For purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977). As thoroughly explained in *McCarthy v. Madigan*: "Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency…[t]he exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court." 503 U.S. 140, 144-45 (1992).

25. Here, Petitioner did not allege or show there has been any administrative determination by DHS's Headquarters Post-order Detention Unit (HQPDU) determining whether there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future to establish exhaustion of administrative remedies. *See* 8 C.F.R. § 241.13(d)-(g). A petitioner's failure to exhaust available administrative remedies under 8 C.F.R. § 241.13, implemented after *Zadvydas*, precludes habeas corpus relief by a reviewing court. *See, e.g.*, *Parker v. Sessions*, No. H-18-2261, 2018 WL 11491450, at *2 (S.D. Tex. July 16, 2018) (dismissal of habeas petition as premature was warranted because petitioner did not allege or show there had been an "administrative determination on the status of [ICE's] removal efforts or the propriety of his continuing confinement" in conformity with 8 C.F.R. § 241.13); *Hung Van Le v. Sessions*, No. H-

18-1984, 2018 WL 3361515, at *1-2 (S.D. Tex. July 10, 2018) (petitioner's filing of habeas petition prior to expiration of six-month post-removal order period and failure to show he had exhausted available administrative remedies under 8 C.F.R. § 241.13 warranted dismissal of habeas petition).

26. Because Petitioner has failed to exhaust administrative remedies available to him prior to filing suit, habeas relief under 28 U.S.C. § 2241 is unavailable to Petitioner. Therefore, the Court should dismiss this action for lack of subject matter jurisdiction.

C. Judicial Review of Petitioner's Removal Proceeding is Unavailable.

27. Lastly, *to the extent the Petitioner seeks judicial review of removal proceeding determinations*, such claims should be dismissed. In the present action under 28 U.S.C. § 2241, there is no jurisdictional basis for this Court to review Petitioner's final order of removal, negative credible fear determination, or his challenges to his removal proceeding. The "sole function" of habeas relief is to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose," which means that it "is not available to review questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976). In *Hernandez-Castillo v. Moore*, the Fifth Circuit held that the REAL ID Act, 8 U.S.C. § 1252, eliminates habeas corpus review of final removal orders and removal-related claims except those entered under expedited removal provision at 8 U.S.C. § 1225(b)(1). 436 F.3d 516, 519 (5th Cir. 2006).

28. Here, the Court's jurisdiction under 28 U.S.C. § 2241 is limited to reviewing statutory and constitutional challenges to immigration detention under *Zadvydas v Davis* 533 U.S. 678 (2001). Thus, Petitioner's failure to state a claim under *Zadvydas* and to exhaust administrative remedies under 8 C.F.R. § 241.13, warrants dismissal of his Petition for Writ of Habeas Corpus.

Accordingly, the Court should dismiss this case in its entirety.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court dismiss the Petition for Writ of Habeas Corpus 28 U.S.C. § 2241 for lack of subject-matter jurisdiction of for failure to state a claim.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on August 28-29, 2025, a copy of the foregoing was served on counsel for Petitioner via email correspondence.

By: *s/ Baltazar Salazar*
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