IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FOAD KARIM FARAHI,

Petitioner,

v. No. 1:25-cv-00793-MLG-JFR

MELISSA ORTIZ, in her official capacity as Warden of the Torrance County Detention Center; MARISA FLORES, in her official capacity as Acting Director of Immigration and Customs Enforcement's Enforcement and Removal Operations El Paso Field Office; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

RESPONDENTS' MOTION TO DIMSISS
PETITIONER'S WRIT OF HABEAS CORPUS (DOC. 1)

INTRODUCTION

Respondents, Immigration and Customs Enforcement ("ICE") and the Department of Homeland Security ("DHS") (collectively "Respondents"), hereby submit this Motion to Dismiss the Petition for Writ of Habeas Corpus (Doc. 1) pursuant to the expedited briefing schedule established by the Court.

Petitioner argues his detention violates the Immigration and Nationality Act ("INA") and the Fifth Amendment. *See* Doc. 1 at 8-11. Foundationally, all of Petitioner's claims rely upon a misinterpretation of *Zadvydas v. Davis*; that the six-month period of presumptively constitutional detention to effectuate a removal order begins to run on the date of the removal order, rather than

the date of any actual detention. *Id*. at 9; *See also Zadvydas v. Davis*, 533 U.S. 678 (2001). Respondents respectfully request this Court dismiss Petitioner's Writ of Habeas Corpus (Doc. 1) for the following reasons:

I. Petitioner's Detention is Lawful

Contrary to Petitioner's assertion, the *Zadvydas* six-month period of detention *begins upon actual detention*. Any interpretation to the contrary is at odds with well-established Supreme Court precedent. Petitioner was detained on June 25, 2025, and therefore his detention is permissible, as a matter of law, until at least December 24, 2025, pending removal.

II. Court Lacks Subject Matter Jurisdiction

Any claims related to the foreseeability of removal or relation to a statutory purpose are, as a matter of law, premature until the expiration of the *Zadvydas* six-month period. As Petitioner's claims are not ripe, there is no Article III standing and the Court lacks subject matter jurisdiction to review.

FACTUAL BACKGROUND[1]

Petitioner has a lengthy and complex history of immigration litigation. On or about December 30, 1993, Petitioner was admitted to the United States as an F-1 student, presumably on his Kuwaiti passport. Petitioner overstayed his F-1 visa and remained in the United States unlawfully. On September 17, 2002, Petitioner filed an application for relief from removal. On November 6, 2002, removal proceedings were commenced. On October 23, 2007, Petitioner withdrew his application for relief and requested Voluntary Departure to Iran, which was granted.

[1] Undersigned counsel presents this information upon information and belief and under expedited briefing requirements pursuant to Court order. There are minor, non-substantive differences in this narrative to those presented in the Petition for Writ of Habeas Corpus (Doc. 1.) Should any of the facts in this section be seriously contested, or considered dispositive in any way, Respondents respectfully request the opportunity to supplement this brief with a signed declaration and/or additional documents.

On November 15, 2007, Petitioner filed an Emergency Motion to Reconsider and Reopen, which was denied by an Immigration Judge on November 19, 2007. Petitioner appealed that denial to the Board of Immigration Appeals ("BIA"). On December 30, 2008, the BIA dismissed his appeal and reinstated the order of voluntary departure to Iran. On December 17, 2009, Petitioner filed a motion to reopen with the BIA. On May 28, 2010, the BIA granted Petitioner's unopposed Motion to Reopen and remanded the case to the Immigration Court.

On October 18, 2013, Petitioner filed an application to Register Permanent Residence, based on an approved Form I-130, filed by his then-wife. On June 22, 2018, DHS filed a Motion to Pretermit, in light of evidence that Petitioner was not married. On July 23, 2018, the court pretermitted Petitioner's adjustment of status application.

On February 20, 2019, Petitioner filed another relief from removal application. On September 8, 2020, the Immigration Judge granted withholding of removal to Iran, but denied such relief to Kuwait. Petitioner appealed this decision. On January 5, 2023, the BIA dismissed his appeal. On or around February 2, 2023, Petitioner submitted a Petition for Review of the BIA decision to the Eleventh Circuit. On February 8, 2024, the Eleventh Circuit, denied in part and dismissed in part the Petition for Review. On June 24, 2025, Petitioner was detained by Respondents to effectuate the final removal order.

In summary, years of litigation and stays of removal were concluded by the Eleventh Circuit upholding removal to Kuwait in February 2024. Petitioner is unlawfully present in the United States and subject to a valid final order of removal to Kuwait.

LEGAL BACKGROUND

I. Post-Removal Order Detention

The seminal case on detention following orders of removal is *Zadvydas v. Davis*, 533 U.S. 678. In *Zadvydas* the Supreme Court reviewed cases where "resident aliens" had been ordered

removed yet remained detained for more than ninety days following their removal orders. The question presented was whether potentially indefinite detention was constitutionally permissible. *See Zadvydas,* 533 U.S. at 693; *See also Demore v. Kim,* 538 U.S. 510, 511 (2003) (brief discussion of central issue in *Zadvydas*). The Supreme Court held that following an order of removal, detention of up to six months was presumptively valid and did not implicate constitutional violations. *Id.* at 701. After this six-month detention period, continued detention may still be constitutionally permissible depending upon the significant likelihood of removal in the reasonably foreseeable future. *Id.*

II. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, they are empowered to hear only those cases authorized and defined in the Constitution which have been entrusted to them under a jurisdictional grant by Congress. *Henry v. Off. of Thrift Supervision*, 43 F.3d 507, 511 (10th Cir. 1994). The party invoking federal jurisdiction, generally the plaintiff, bears the burden of establishing its existence. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). Rule 12(b)(1) allows defendants to raise the defense of lack of subject matter jurisdiction by motion. *See* Fed. R. Civ. P. 12(b)(1). Ripeness is a justiciability doctrine derived from the case or controversy clause of Article III. *Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass'n*, 823 F. App'x 686, 690 (10th Cir. 2020). Whether a claim is ripe for review bears on a court's subject matter jurisdiction. *Id*.

ARGUMENT

I. Petitioner's Constitutional Claims (Counts 2 and 3)

Petitioner argues that Respondents are precluded from the detention of any noncitizen whose final order of removal is more than six-months old. *See generally* Doc. 1. Notably, Petitioner

does not cite a single case in support of this argument; that the *Zadvydas* six-month detention clock runs on a final order of removal, rather than any actual detention itself.[2] This argument is flawed, both in its reading of the applicable statutes, case law, and as a matter of public policy.

The clarity of *Zadvydas* has largely preempted arguments in the vein that Petitioner makes here. On the rare occasions this argument has surfaced courts have consistently determined, to put it plainly, that it "defies common sense". *See e.g. Callender v. Shanahan*, 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017) ("[Petitioner] is confusing the 90–day 'removal period' under 8 U.S.C. § 1231(a)(1)(A), which began when his order of removal became final in 2006…with the six-month 'presumptively reasonable period of detention' under [*Zadvydas*], *which could not have begun until he was detained by ICE"*) (emphasis added); *Cheng Ke Chen v. Holder*, 783 F.Supp.2d 1183, 1192 (N.D. Ala. 2011) ("Because *Zadvydas* clearly involved ***detention*** of a petitioner during the presumptively reasonable period, it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody. Therefore, *Zadvydas* authorizes the respondents to detain the petitioner for up to six-months while they attempt to remove him from the country.") (emphasis in original); *Rodriguez–Guardado v. Smith*, 271 F.Supp.3d 331, 335 n.8 (D. Mass. 2017) ("Petitioner's contention that the *Zadvydas* clock runs while he is not in custody defies common sense") (internal quotation marks and citation omitted); *Chun Yat Ma v. Asher*, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) ("Detention is the core issue in *Zadvydas*...it defies common sense to suggest *Zadvydas* time can run while petitioner is not in custody") (internal quotation marks and citation omitted).

[2] To the extent Petitioner infers *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1313-14 (11th Cir. 2019) provides support, Petitioner would be ignoring the fact that the noncitizen in *Singh* had been *detained over 31 months*. *See* Doc. 1 at 9. Respondent's do not dispute that after six-months *of actual detention*, pursuant to *Zadvydas,* a likelihood of removal in the reasonably foreseeable future is required to justify further detention.

Petitioner's interpretation is also contrary to public policy, as noncitizens who successfully evade detention following a removal order would then reap significant benefit, so long as they remained conveniently "out of pocket" at least six-months. Even in cases absent such nefarious intent, Petitioner's own litigation history highlights an example of the impracticality of this interpretation. If the *Zadvydas* six-month detention clock started running upon the final order of removal, as claimed by Petitioner, that clock would've expired months before Petitioner's appeal *of that very order* had concluded (not to mention the expiration of any stays of removal during active litigation).[3] *Zadvydas* was not concerned with noncitizens on the non-detained immigration docket (who would need to be later found and detained to effectuate removal orders); it addressed the potential indefinite detention of noncitizens already detained when ordered removed. *See Callender*, 281 F. Supp at 436 (citing *Zadvydas* "delays in effecting the deportation of a non-detained alien do not implicate the alien's liberty interests and thus do not raise the same 'serious constitutional concerns.'").

Finally, as the *Zadvydas* detention period has not yet expired, Petitioner's constitutional claims are not ripe for review. Until the *Zadvydas* detention period has expired, judicial review of these Fifth Amendment claims is premature. The Court therefore does not have subject matter jurisdiction to review the Petition for Writ of Habeas Corpus (Doc. 1).

For these reasons, Petitioner's constitutional claims (Counts 2 and 3) should be dismissed.

II. Petitioner's Statutory Claim (Count 1)

Petitioner seems to acknowledge that the INA allows for detention of an alien beyond the removal period. Doc. 1 ¶ 49; 8 U.S.C. 1231 (a)(6). Petitioner again seems to suggest, however, that the Supreme Court held that detention after six months had passed *from the time of the removal*

[3] Petitioner indicates the removal order became final on January 5, 2023. *See* Doc. 1 at 7. Petitioner indicates his appeal of that decision to the Eleventh Circuit was dismissed on February 8, 2024. *Id.*

order, "is no longer presumptively reasonable." Doc. 1 ¶¶ 51, 52, citing *Zadvydas*, *Singh*, 945 F.3d 1310; and *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004)

None of these cases support Petitioner's argument that detention six months after the deportation order is no longer presumptively reasonable. As discussed above, *Zadvydas* addressed only the length of time of detention, not the time between the removal order and detention. In *Singh*, 945 F.3d 1310, the petitioner had been *detained over 31 months*. 945 F.3d at 1312 ("Mr. Singh has been in the custody of [ICE] for over 31 months"). In *Soberanes*, the Tenth Circuit rejected Petitioner's argument that detention should not be sanctioned because the eight-year-old removal order was allegedly invalid. Since Plaintiff has been detained for less than six months, his detention is presumptively valid. Doc. 1 ¶ 42 (he was picked up on June 24, 2025).

Petitioner alleges a statutory violation of the INA based upon detention without a significant likelihood of reasonably foreseeable removal. *See generally* Doc. 1 at 8-9. This allegation may be easily dismissed for several reasons. First, the likelihood of reasonably foreseeable removal analysis is inapplicable since Petitioner's detention is presumptively valid. Doc. 1 ¶ 24; *Zadvydas*, 533 U.S. at 701-702. Second, even if that analysis was applicable, Petitioner has not provided good reason to believe that there is no significant likelihood of removal in the foreseeable future. *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("[T] he onus is on the alien to 'provide [] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'"). And, in fact, removal efforts to Petitioner's country of origin are proceeding without delay.[4] Third, Petitioner has provided no authority that any alleged statutory violation would entitle him to release.

[4] While Petitioner's withholding of removal to Iran was granted, similar relief to Kuwait was denied. The Eleventh Circuit affirmed Petitioner's removal to Kuwait. Petitioner has a valid order of removal and is actively in the process of removal to Kuwait, awaiting travel documents from the Kuwaiti Consulate.

For these reasons, Petitioner's statutory claim (Count 1) should be dismissed.

III. Release Pending Determination (Count 4)

Respondents question whether Petitioner's Count Four "Release Pending Determination" establishes a separate cognizable claim in habeas. *See* Doc. 1 at 12. To the extent that it does raise a separate cognizable claim, it is well established that detention is a constitutionally valid aspect of the deportation process. *See generally Zadvydas*, 533 U.S. 678*; See also Demore,* 538 U.S. 510; *Jennings v. Rodriguez,* 583 U.S. 281 (2018). Respondents have a clear, substantial and legitimate interest in detention to effectuate a final order of removal. However, Respondent's contend this is more appropriately understood as a relief requested rather than a separate legal basis of claim.

For these reasons, Petitioner's "Release Pending Determination" claim (Count 4) should be dismissed.

CONCLUSION

The Court should dismiss Petitioner's Writ for Habeas Corpus (Doc. 1) for the following separate and independent reasons: 1) Petitioner's detention pending removal is permissible pursuant to *Zadvydas*, and there has been no statutory or constitutional violation and 2) Petitioner's claims are not ripe for review, and the Court does not have subject matter jurisdiction. For these reasons, individually or collectively, dismissal is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2025, I filed the foregoing document electronically through the CM/ECF system. Pursuant to the CM/ECF Administrative Procedures Manual, §§ 1(a), 7(b)(2), such filing is the equivalent of service on parties of record.

/s/ Ryan M. Posey 10/3/2025
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