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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IOAN MUNTEAN, *Petitioner*, v. KRISTI NOEM, *Secretary of Homeland Security*, *et al.*, *Respondents*.	HON. ESTHER SALAS, U.S.D.J. Civil Action No. 25-14868 (ES)

RESPONDENTS' ANSWER TO PETITION OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

Petitioner is subject to a final order of removal from March 2020, following a finding by an immigration judge that he is inadmissible under the Immigration and Nationality Act ("INA"). In the same order finding Petitioner inadmissible, the immigration judge granted Petitioner withholding of removal to his native country of Romania. Although Petitioner was in immigration custody following entry of the final order until May 15, 2020, he was, for the most part, on supervised release for the past five years, subject to re-detention if U.S. Immigration and Customs Enforcement ("ICE") found Petitioner could be removed to a third country (i.e., one other than Romania). *See* 8 C.F.R. § 241.13(i)(2). In July 2025, ICE rearrested Petitioner for purposes of executing the final removal order, and, about sixty days thereafter, issued a formal notice revoking supervised release because ICE determined it could effectuate Petitioner's removal.

Petitioner now brings a habeas action seeking immediate release. The Court should dismiss the petition for multiple reasons. First, Petitioner's "prolonged detention" claims fail because Petitioner is well within the six-month period the Supreme Court considers reasonable to detain an alien pursuant to a final removal order and, in any event, ICE is engaged in continuing and progressing efforts to effectuate Petitioner's removal to Germany—where Petitioner has significant ties—and so his removal is significantly likely in the reasonably foreseeable future. Second, 8 U.S.C. § 1252 bars review over Petitioner's claim challenging ICE's revocation of supervised release and any due process claim fails on the merits.

BACKGROUND

I. Petitioner's Immigration History

A. Petitioner's Final Order of Removal

Petitioner is a Romanian native and citizen who entered the United States without admission on an unknown date. *See* ECF No. 1 ("Pet."), ¶ 30. In July of 2018, ICE initiated removal proceedings against Petitioner, charging him with violating 8 U.S.C. § 1182(a)(6)(A)(i), which makes any alien present in the United States without admission or parole inadmissible. ECF No. 1-3 ("Notice to Appear"). On February 28, 2020, an immigration judge ordered Petitioner removed, denied Petitioner's asylum claim and application for withholding of removal under the Convention Against Torture ("CAT"), but granted withholding of removal to Romania. *See* ECF No. 1-4 ("Order of Immigration Court"). The removal order became administratively final March 31, 2020, when neither party appealed the immigration judge's decision within the time allotted to do so. *See* Order of Immigration Court (reserving until March 30, 2020, for any appeals); 8 C.F.R. § 1241.1(c) (removal orders become final upon expiration of time to appeal if respondent fails to appeal within that time); *see also* ECF No. 1-7 ("EOIR Automated Case Information").

As a result of the final order of removal, Petitioner was detained pursuant to 8 U.S.C. § 1231(a)(1) until about May 15, 2020 (i.e., about forty-five days after the order of removal became administratively final), when ICE released Petitioner subject to an Order of Supervision. Pet. ¶ 34; *see also* ECF No. 1-5 ("Order of Supervision Outprocessing Checklist"); ECF No. 1-6 ("Release Notification"). The Release

Notification specified that Petitioner's release did not affect his removal or constitute admission to the United States and was subject to complying with written conditions on an Order of Supervision. *See* Release Notification.

B. Petitioner's Recent Arrest and Present Detention

Petitioner remained released until July 12, 2025, when he was taken back into ICE custody. *See* Pet. ¶ 40; *see also* Declaration of Noah Adams ("Adams Decl."), ¶ 6. According to ICE, ICE rearrested Petitioner because he had a final order of removal, and, about sixty days after rearresting him, issued a formal document revoking his supervised release because ICE determined that it could effectuate Petitioner's removal to a third country in the foreseeable future. *See* Declaration of Alexander Cabezas ("Cabezas Decl."), ¶ 8; *see also* Ex. A ("Notice of Revocation"). Specifically, on September 10, 2025, ICE served Petitioner a Notice of Revocation of Release, which indicated the grounds for Petitioner's detention; specified that Petitioner would promptly receive an informal interview to respond to the reasons for revocation of supervised release; and advised Petitioner of his obligation to make reasonable efforts to cooperate with ICE's removal efforts including by making timely applications in good faith for travel documents. *See* Ex. A, Notice of Revocation.

C. ICE's Efforts to Effectuate Petitioner's Removal to Germany

Since Petitioner's arrest in July of 2025, ICE has engaged in efforts to effectuate Petitioner's removal to a third country (i.e., a country other Romania, where he has a withholding of removal order). On July 21, 2025, ICE Headquarters received notifications from the ICE ERO Attaché in Austria regarding Petitioner's

case, and ICE placed Petitioner on a third-country removal list. Adams Decl. ¶ 7. On July 25, 2025, ICE Headquarters advised that ICE Enforcement and Removal Operations ("ERO")-Newark should continue efforts to effectuate Petitioner's removal by reviewing his A-file and conducting interviews to determine whether Petitioner has any family ties or other connections to other countries. *Id.* ¶ 8. On September 9, 2025, ICE RIO contacted the State Department and Department of Homeland Security to seek additional assistance in identifying a third country for removal. *Id.* ¶ 9. On the same date, ICE RIO contacted the Embassy of Germany, upon discovering that Petitioner's wife is a German citizen. *Id.* ¶ 10. In a response on that same day, September 9, the German Embassy indicated it would review Petitioner's case and instructed ICE ERO to complete a travel document request for both Petitioner and his wife. *Id.*

On September 10, ICE provided Petitioner with a German travel document application. Cabezas Decl. ¶ 11. Petitioner completed the application and on September 12, 2025, ERO-Newark sent the completed application for a German travel document to RIO. *Id.* ¶ 12. ERO-Newark is also in possession of Petitioner's valid and unexpired Romanian passport, which, in ICE's view, "will expedite Germany's decision-making since Romania is a member of the European Union." *Id.* ¶ 13. Based on the status of these ongoing efforts to date, ICE, through Acting Assistant Field Office Director Alexander Cabezas, believes there is a reasonable likelihood that Petitioner will be removed in the foreseeable future. *Id.* ¶ 14.

II. Relevant Statutory and Regulatory Backdrop

A. Removal and Detention under 8 U.S.C. § 1231(a)

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2).[1] There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal 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." 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

The INA does not place an explicit time limit on how long detention during the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579

[1] The mandatory removal period begins on the latest of three possible dates: (1) the date an order of removal becomes "administratively final," (2) the date of the final order of any court that entered a stay of removal, or (3) the date the alien is released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). Here, pursuant to 8 C.F.R. § 1241.1(c), the order of removal became administratively final March 31, 2020. *See supra* p. 2.

(2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the Supreme Court further clarified that a six-month period of detention is "presumptively reasonable." *Id.* at 701. "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." *Id.*

B. Third-Country Removal

As a general matter, aliens ordered removed "may designate one country to which [he or she] wants to be removed," and DHS "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or her designated country, including if "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien "shall" be removed to his or her country of nationality or citizenship, unless the country "is not willing to accept" the alien." *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv).

Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). In addition, DHS "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 [his or her] race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

C. Orders of Supervision

In the event the government does not further detain and instead releases the alien at the end of the 90-day mandatory removal period, the government must do so under conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that a alien who "does not leave or is not removed within the removal period … shall be subject to supervision"); *see also* 8 C.F.R. §§ 241.4(j), 241.5. Regulations promulgated pursuant to the INA require that conditions of supervised release include: reporting to an immigration officer; making "efforts to obtain a travel document and assist[ing] the [government] in obtaining a travel document"; reporting for physical and mental examinations; obtaining advance approval of travel; and providing ICE with written notice of any address changes. *See* 8 C.F.R. § 241.5(a).

When, as here, ICE determines that a released noncitizen can be removed to a third country, ICE can revoke the noncitizen's release. *See* 8 C.F.R. § 241.13(i)(2) ("The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."); *see also* 8 C.F.R. § 241.4(b)(4) ("If the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, the alien shall again be subject to the custody review procedures under this section."); *id.* § 241.4(*l*)(2)(iii) ("Release may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . [i]t is appropriate to enforce a removal order[.]"). In that scenario, the government must notify the alien "upon revocation . . . of the reasons for revocation of his or her release." *See id.* § 241.13(i)(3). "The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." *Id.* Thereafter, the government conducts six-month custody reviews. 8 C.F.R. § 241.13(j).

III. Procedural History

On August 22, 2025, Petitioner filed this habeas petition under 28 U.S.C. §

2241, challenging his present detention and revocation of supervised release. Petitioner argues that his continued detention is unconstitutional and violates 8 U.S.C. § 1231(a)(6) because, he claims, he has been detained beyond the six-month period during which post-removal order detention is considered presumptively reasonable, and there is no reason to believe his removal "will ever become practicable and legally permissible." Pet. ¶ 54; *see also id.* ¶¶ 50-56. In other words, he argues there is "no significant likelihood of removal in the reasonably foreseeable future," or "SLRRFF." *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner also claims ICE has detained him without legal basis and brings a due process claim alleging that his recent arrest and revocation of supervised release violated 8 C.F.R. § 241.4(l). *See id.* ¶¶ 57-64. The Court ordered Respondents to answer the petition by September 12, and Petitioner to reply by September 17. *See* ECF No. 4.

LEGAL ARGUMENT

I. Petitioner's *Zadvydas* Claim Fails.

Petitioner first argues that his continued detention violates 8 U.S.C. § 1231(a)(6) and *Zadvydas* because he was detained outside of the presumptively reasonable six-month period. Pet. ¶ 51. In Petitioner's view, the six months begins to run when the order of removal becomes final—i.e., February 28, 2020—and thus "would have lapsed thereafter on August 26, 2020." Pet. ¶ 51.[2]

[2] As noted above, according to the relevant regulations, the removal order in this case became administratively final March 31, 2020, as that was the first date upon "expiration of the time allotted for an appeal" after Petitioner chose not to appeal the immigration judge's decision. 8 C.F.R. § 1241.1(c); *see also supra* pp. 2. But the result is the same even accepting February 28, 2020, as the operative date; in either case, the post-final-order detention is within six months.

This claim fails because it miscalculates when the six-month period in *Zadvydas* begins to run. The clock on the six month presumptively reasonable period does not start when the order of removal becomes final; rather, it counts when ICE detains the Petitioner after the order is final. "Most district courts" correctly recognize this accrual event:

> [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, *see id.* § 1231(a)(1)(B), with the six-month "presumptively reasonable period of detention" under *Zadvydas*, 533 U.S. at 701, 121 S. Ct. 2491, which could not have begun until he was detained by ICE in 2015. This result is compelled not only by the language of *Zadvydas* but also by its logic. It is the prospect of indefinite "detention" that led the Supreme Court to create the six-month presumption. *Id.* at 682, 121 S. Ct. 2491; *see also id.* at 689, 121 S. Ct. 2491 (read "in light of the Constitution's demands," § 1231(a)(6) "does not permit indefinite detention"); *Beckford*, 168 F. Supp. 3d at 536 ("In *Zadvydas*, the Supreme Court was presented with the challenge of reconciling [the] apparent authorization of indefinite detention [under § 1231(a)(6)] with the Fifth Amendment's prohibition against depriving a person of their liberty without due process."). 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." *Zadvydas*, 533 U.S. at 682, 121 S. Ct. 2491.

Callender v. Shanahan, 281 F. Supp. 3d 428, 435–36 (S.D.N.Y. 2017); *See id.* at n.7 ("[T]he district courts have come to inconsistent conclusions [about *Zadvydas* accrual] . . . however, most district courts have concluded—as does this Court—that *Zadvydas* meant what it said: six months is the presumptively reasonable period of 'detention' after the entry of a final order of removal."); *see, e.g.*, *Rodriguez–Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. Sept. 22, 2017) ("Petitioner's contention that the *Zadvydas* clock runs while he is not in custody defies common sense."); *Chun Yat Ma v. Asher*, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) ("Petitioner first

argues that the time period for analyzing his detention under *Zadvydas* begins from when his removal order became final, rather than the date of his detention. The Court disagrees . . . Detention is the core issue in *Zadvydas*, and Petitioner was not detained until May 9, 2011," five years after his order of removal became final in 2006).[3]

Here, Petitioner was initially detained for 45 days, from March 31 (when the removal order became administratively final) until May 15, 2020 (when Petitioner was released from custody). *See* Cabezas Decl. ¶ 7. The ensuing period in which Petitioner was released, i.e., not in "detention," does not count toward the presumptively reasonable period. *See Zadvydas* 533 U.S. at 682; *see supra* p. 10. The six-month period under *Zadvydas* then only resumed on July 12, when ICE revoked Petitioner's supervised release by redetaining him; it did not begin to run right when 90-day statutory removal period closed. In other words, Petitioner has been in post-removal-order detention for approximately three-and-a-half months (or 107 days) to date.

Based on *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained "for less than six months must be dismissed as premature." *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) ("To state a claim under *Zadvydas*, the

[3] *But see Tadros v. Noem*, No. 25-4108 (EP), 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding removal period began upon the affirmance of the removal order even though the petitioner was immediately released, rather than when he was detained 16 years later, and rejecting the argument that the petitioner could not obtain habeas relief because he had not yet been in detention for six months).

presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal."); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008) (collecting cases). Accordingly, Petitioner's detention is not prolonged.

II. Petitioner's Removal Is Reasonably Foreseeable.

Next, Petitioner argues that his detention violates the due process clause because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. ¶ 54. *See Zadvydas*, 533 U.S. at 701 (explaining alien challenging detention beyond six-month period bears burden of showing there is no significant likelihood of removal in reasonably foreseeable future). The Court should reject this claim because Petitioner has failed to carry his initial burden. *See Zadvydas*, 533 U.S. at 701; *see also Barneboy v. Atty Gen.*, 150 F. App'x 258, 261 n.2 (3d Cir. 2005) (recognizing "burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." (quotation omitted)). Instead, the petition attempts to improperly shift the initial burden on to Respondents, *see* Pet. ¶ 48, or relies on the conclusory assertions that are insufficient to satisfy Petitioner's showing, *see* ¶ 54 (alleging there is no 'SLRRFF' because "there is no factual basis to believe that a third-country removal will ever become practicable and legally permissible," and Respondents are detaining "Petitioner without evidence that they will be able to remove him imminently, to Romania or to any other country."); *see also Rene v DHS*, No. 06-336 (JAG), 2007 WL 708905, at *4 (D.N.J. Mar. 5, 2007) ("To carry his burden, Petitioner must present evidence beyond his own speculation."); *cf. James v. Lowe*, No. 23-1862, 2024 WL 1837216, at *3 (M.D. Pa. Apr.

26, 2024) (rejecting "unsupported contentions" and speculation that "it could take 'years' for" removal).

Respondents, however, have met the significant-likelihood standard here based on their efforts to remove Petitioner to Germany, where his wife is a citizen and where he previously lived. After *Zadvydas*, "immigration regulations were amended to provide guidelines for the ICE to use in determining whether removal is reasonably foreseeable[.]" *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 424 (M.D. Pa. 2004) (quoting 8 C.F.R. § 241.13(f)). The Court, here, should evaluate the foreseeability of removal based on those nonexhaustive factors, such as (1) the history of the alien's efforts to comply with the order of removal, (2) the history of the ICE's efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the ICE's efforts to remove this alien and the alien's assistance with those efforts, (3) the reasonably foreseeable results of those efforts, (4) the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question, and (5) the receiving country's willingness to accept the alien into its territory. Importantly, the regulations state that, "[w]here [ICE] is continuing its efforts to remove the alien, there is no presumptive period of time within which the alien's removal must be accomplished, but the prospects for the timeliness of removal must be reasonable under the circumstances." 8 C.F.R. § 241.13(f). *See also Beckford v. Lynch*, 168 F. Supp. 3d 533, 539 (W.D.N.Y. 2016) ("[T]he mere passage of time [is] insufficient to meet the petitioner's initial burden to demonstrate no significant likelihood of removal under the Supreme Court's holding in *Zadvydas*.").

Here, ICE has demonstrated ongoing efforts to remove Petitioner to Germany, including with Petitioner's assistance, and with involvement from the Department of State and apparent willingness from Germany, the receiving country, to accept Petitioner. *See* 8 C.F.R. § 241.13(f). On September 9, the German Embassy responded to an inquiry from ICE Headquarters sent earlier the same day regarding Petitioner's case, indicating they would review the case upon Petitioner's completion of a travel document request. Adams Decl. ¶ 10. ICE served Petitioner a travel document application the next day, September 10, and by September 12, Petitioner completed the application and ICE-ERO submitted the completed application to RIO. Cabezas Decl. ¶¶ 11-12. Germany has already issued a travel document for Petitioner's wife, who is tentatively scheduled for commercial removal to Germany on September 13. *See* Adams Decl. ¶ 11.

Petitioner's demonstrated nexus to Germany is also a relevant consideration. *Cf. Zavvar v. Scott, et al.*, No. 25-2104, 2025 WL 2592543, at *7 (D. Md. Sept. 8, 2025) (finding third-country removal not reasonably foreseeable, in part, because petitioner had no ties to countries at issue). Petitioner's wife is a German citizen who, as discussed above, is scheduled for removal to Germany. *See* Cabezas Decl. ¶ 8; Adams Decl. ¶ 11. And as another data point, according to DHS statistics, in 2022 (the latest year of data released), ICE often repatriates people to Germany. *See* DHS Yearbook of Statistics 2022, *Table 41 Noncitizen Enforcement Returns by Region and Country of Nationality*, https://ohss.dhs.gov/topics/immigration/yearbook/2022/table41. *See also Beckford v. Lynch*, 168 F. Supp. 3d 533, 539 (W.D.N.Y. 2016) (relying on DHS

Yearbook Statistics to conclude "the available statistical evidence reveals that in recent years, DHS has successfully repatriated significant numbers of aliens to Jamaica, indicating no institutional barriers to petitioner's removal").[4]

In sum, the government is authorized to detain Petitioner for the "period reasonably necessary to bring about [his] removal from the United States," *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022) (cleaned up), his detention is within the presumptively reasonable six-month period, *see supra* pp. 9-11, and ICE is actively engaged in efforts to effectuate Petitioner's removal to Germany, with involvement from the Department of State and German Embassy. Respondents have demonstrated there is a significant likelihood of removal in the reasonably foreseeable future, and the *Zadvydas* claims fail. *See Barenboy v. Att'y Gen.*, 160 F. App'x 258, 261 n.3 (3d Cir. 2005) (finding petitioner failed to show no reasonable likelihood of removal in foreseeable future where embassy was still willing to consider citizenship application); *but see Munoz-Saucedo v. Pittman*, No. 25-2258 (CPO), 2025 WL 1750346, at *6-8 (D.N.J. June 24, 2025) (finding removal not reasonably foreseeable although detention within six-month period, in large part, because Court found there was "no country willing to accept [petitioner] or currently considering a request to accept him," and "ICE cannot provide any information as to whether and when additional requests would be directed and, if so, to which countries.").

[4] For comparison, ICE repatriated more people to Germany that year than to Jamaica. *See id.* Removals to Germany also exceed those to Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Honduras, Ireland, Nicaragua, Pakistan, Peru, Russia, and Venezuela, respectively. *Id.*

III. Petitioner's Due Process Claim Related to The Redetention Fails

Lastly, Petitioner argues that "Respondents' actions in re-detaining Petitioner – who had been released on supervision – and re-arresting Petitioner without any explanation of the legal or factual basis for re-detention, violated 8 C.F.R. § 241.4(l)[.]" Pet. ¶ 61. Nor has he "been afforded an initial informal interview to respond to the reasons for revocation stated in the notification[.]" *Id.* ¶ 62. This claim fails because the INA deprives this Court of jurisdiction over the challenge to the revocation of supervised release, and, in the alternative, ICE complied with its notice regulations, and cured any possible noncompliance.

A. The Court Lacks Jurisdiction Over This Claim

Federal courts are courts of limited jurisdiction. *See 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.* (citations omitted); *see also Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Courts created by statute can have no jurisdiction but such as statute confers.").

Through this habeas action, Petitioner challenges the revocation of his supervised release and present detention for purposes of executing a final order of removal. Congress, however, divested this Court from hearing such claims by way of the INA and the REAL ID Act. *See* 8 U.S.C. §§ 1252(b)(9), (g). At the outset, 8 U.S.C. § 1252(g), as amended by the REAL ID Act, deprives courts of jurisdiction—including habeas corpus jurisdiction—over reviewing "any" claim "arising from the decision or action" to (among other things) "execute removal orders." Put differently, this

provision bars habeas review in federal district court 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).[5] That provision bars Petitioner's claims here.

Indeed, every circuit court of appeals to address the issue—including the Third Circuit—has held that § 1252(g) eliminates subject-matter jurisdiction over habeas challenges (including those raising constitutional claims) to an arrest or detention for the purpose of executing a final removal order. *See Tazu v. Atty. Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) ("The plain text of § 1252(g) covers decisions about *whether* and *when* to execute a removal order."); *see also Rauda v. Jennings,* 55 F.4th 773, 778 (9th Cir. 2022) (holding court lacked jurisdiction over habeas challenge to the exercise of discretion to execute removal order); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021) (holding § 1252(g) barred review of decision to execute removal order while individual sought administrative relief); *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

[5] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3).

on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review.").[6]

The Third Circuit's decision in *Tazu* is instructive. There, the petitioner sought to challenge the government's decision to re-detain him for prompt removal, claiming—much like Petitioner here—that a revocation of supervised release without notice and a revocation interview allegedly violated agency rules and due process. *See Tazu*, 975 F.3d at 298. The Third Circuit found that claim barred by 8 U.S.C. § 1252(g) because it sought to challenge "a key part of executing" a removal order: a "short re-detention for removal." *Id.* As the Third Circuit recognized, re-detaining the petitioner was "simply the enforcement mechanism the [government] picked to execute [the petitioner's] removal order." *Id.* at 298-99. And § 1252(g) "funnels review" of such claims away from the district courts, and to the courts of appeals through a petition for review. *Id.* at 299. Here, as in *Tazu*, Petitioner challenges the enforcement mechanism utilized to execute his final order of removal: the decision to

[6] Relatedly, § 1252(g) bars district court review of challenges to the method by which DHS chooses to commence removal proceedings. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process."); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest Saadulloev on April 4, 2023, clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g).").

revoke supervised release and re-detain him pending removal. Here, as in *Tazu*, this Court lacks jurisdiction over such claims under 8 U.S.C. § 1252(g).

Petitioner's challenges regarding the execution of his final removal order are also foreclosed under 8 U.S.C. § 1252(b)(9). In passing the REAL ID Act, Congress prescribed a single path for Article III review of removal orders: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5); *see also Verde-Rodriguez v. Atty. Gen.*, 734 F.3d 198, 201 (3d Cir. 2013). And as the REAL ID Act further provides. "[j]udicial review of *all questions of law and fact*, including interpretation 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." 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction, 8 U.S.C. § 1252(b)(9) and § 1252(a)(5) express Congress's intent to funnel judicial review of every aspect of removal proceedings into a petition for review filed in the courts of appeals. *See Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (recognizing that these provisions "clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)" via petition for review).

These provisions sweep more broadly than § 1252(g). *See AADC*, 525 U.S. at 483. Indeed, pursuant to § 1252(b)(9) ad 1252(a)(5), "most claims that even relate to

removal" are improper if brought before the district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020); *see also AADC*, 525 U.S. at 483 (describing § 1252(b)(9) as an "unmistakable zipper clause," and defining a zipper clause as one "that says 'no judicial review in deportation cases unless this section provides judicial review.'"). Here, 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction over Petitioner's claims.

Once again, the Third Circuit's *Tazu* decision guides the analysis. In another part of that decision, the Third Circuit held that the same claims concerning a revocation of supervised release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9) because the claims arose from actions taken to execute the petitioner's removal. 975 F.3d at 299. Here, as in *Tazu*, the fourth count challenges the government's decision to revoke supervised release and re-detain him for removal. Petitioner's claims arise directly out of actions taken to remove him, and the questions raised by those claims are intertwined with his removal. *See id.*

The recent decision from the District Court in *Khalil v. Joyce*, No. 25-1963 (MEF), ECF No. 214, 2025 WL 1232369 (D.N.J. Apr. 29, 2025), does not cast doubt on the conclusion that 8 U.S.C. §§ 1252(g) and 1252(b)(9) apply here. In that case, unlike here, the petitioner had not been issued a final removal order, so the District Court concluded that § 1252(b)(9) did not apply because that provision "takes away federal district court jurisdiction only after an order of removal has been entered," and "none ha[d] been entered" in that case. *Id.* at *60. As to § 1252(g), the District Court found that it was inapplicable because the provision "pulls away jurisdiction over specific actions" by DHS—"not over actions by the Secretary of State, like [the]

determination" at issue, "and not over across-the-board policies, like the one alleged" in that case. *Id.* Here, Petitioner does not challenge any action by the Secretary of State, nor does he attack any alleged broad-based policies. The reasoning behind the recent jurisdictional decision in *Khalil* does not affect the conclusion here.

Petitioner's claim falls within the INA's jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9), so the Court should dismiss the fourth count in the petition for lack of jurisdiction.[7]

B. The Redetention Did Not Violate 8 C.F.R. § 241.4(l), and Any Violation is Cured

ICE has provided Petitioner a notice explaining the reason for the revocation of release, and ICE will provide Petitioner an informal interview. *See* Cabezas Decl. ¶ 11; Ex. A, Notice of Revocation. In this regard, two facts are important to note at the outset: first, ICE did not redetain Petitioner for noncompliance with the terms of supervised release, and second, ICE provided the notice of revocation two months after redetaining Petitioner, in which the notice states that ICE is now able to effectuate his removal to a third country. These two facts, in turn, raise two issues: was ICE's post-detention notice timely under the regulations, and, if not, did ICE cure

[7] Respondents are also aware of out-of-district case *Patel v. Barr*, No. 20-3856, 2020 WL 6888250, at *3 (E.D. Pa. Nov. 24, 2020), but respectfully submit that it is also distinguishable. In *Patel*, the court held the jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(b)(9) and 1252(g) did not apply, notwithstanding *Tazu*, because while Tazu had a pending petition for review and had been granted a stay of removal, Patel had neither. Because, in *Patel*, the Board of Immigration Appeals delayed ruling on Patel's various motions, the court found that Patel "ha[d] no access to judicial review." *Id.* at *3. Here, however, Petitioner could have sought review of the immigration judge's decision. But he did not, and waived his administrative appeal, thus rendering that decision by the immigration judge administratively final.

any noncompliance with the regulations by belatedly serving the revocation notice? We address each in turn.

There is no dispute that ICE must provide Petitioner notice of the reason for revocation. The parties do dispute the timing of the notice. The regulation requires ICE to notify the noncitizen "upon revocation . . . of the reasons for revocation of his or her release" and "promptly" perform an initial interview. 8 C.F.R. § 241.13(i)(3). ICE's position is that providing the notice eight weeks after redetention meets the "upon revocation" requirement. *But see Arias Gudino v. Lowe,* No. 1:25-CV-00571, 2025 WL 1162488, at *12 (M.D. Pa. Apr. 21, 2025) (finding delayed notice to be noncompliant); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025).

More importantly, in the alternative, ICE believes that it has cured any timing issues around the reasons for release. The Third Circuit has stated that "a procedural due process violation is not complete unless and until the [s]tate fails to provide due process because the state may cure a procedural deprivation by providing a later procedural remedy." *Bonilla v. City of Allentown*, 359 F. Supp. 3d 281, 297 (E.D. Pa. Feb. 13, 2019) (quoting *Zinermon v. Burch*, 494 U.S. 113, 126 (1990)). Here, even if a procedural due process violation occurred between the redetention and the issuance of the revocation notice, ICE remedied that violation by providing notice to the Petitioner of the legal justification for his detainment. Having provided the legal justifications, the Petitioner had administrative remedies by which he could contest that legal justification, including the opportunity to administratively challenge the revocation of his supervision. 8 C.F.R. § 241.4(*l*)(3). Pursuant to regulations, a review

of Petitioner's custody will occur within "approximately three months after release is revoked." *Id.* Accordingly, the Court should deny Petitioner's final claim.[8]

CONCLUSION

For the reasons above, the Court should dismiss the petition.

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[8] Although the petition discussions medical care issues, Petitioner does not assert a conditions-of-confinement claim nor seek habeas relief with respect to his medical care. But even if he did, that claim would be barred as beyond the scope of habeas jurisdiction under 28 U.S.C. § 2241. *See, e.g.*, *Folk v. Warden Schuylkill FCI*, No. 23-1935, 2023 WL 5426740, at *2 (3d Cir. 2023) (per curiam) (finding "conditions-of-confinement claim related to the conditions of the facilities or the lack of adequate medical care … non-cognizable" under § 2241); *but see Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 323-25 (3d Cir. 2020) (holding under extraordinary circumstances of COVID pandemic in March 2020, civil immigration detainees may challenge conditions of confinement under § 2241 where "*the only relief sought*—the only adequate relief for the constitutional claims—[was] release" from custody).

Finally, the third count in the petition, *see* Pet. ¶¶ 57-59, does assert any underlying claim and, to the extent it is intended to serve as a "catch-all" claim, fails because the three other substantive claims fail for the reasons above.