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

YUSUF TOURAY, Petitioner, v. ROBERT K. LYNCH,[1] Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, Respondent.	Case No. 1:25-cv-00683 District Judge Douglas R. Cole Magistrate Judge Caroline H. Gentry

RETURN OF WRIT

Petitioner, Yusuf Touray, is lawfully detained pursuant to 8 U.S.C § 1231(a) and his Court cannot enjoin action taken to remove Petitioner from the United States. As such, this Court should deny and dismiss the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 and its accompanying Emergency Motion for Temporary Restraining Order to Stay Removal Pending Resolution of Habeas Petition. (Petition, ECF 1; Motion for TRO, Doc. 2.) Petitioner has raised no issues subject to judicial review, pled no facts inconsistent with due process, and made no claims that his removal will not happen in the reasonably foreseeable future. Nor has Petitioner demonstrated that this Court can grant any relief requested in his motion for a TRO. Therefore, this Court should dismiss the petition under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

[1] Kevin Raycraft is currently the Acting Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement.

I. FACTUAL BACKGROUND

Petitioner, Yusuf Touray ("Petitioner" or "Touray"), brings this action as a petition for habeas corpus under 28 U.S.C. § 2241. (Petition, ECF 1, PageID 1.) Touray is a 31-year old national and citizen of Gambia and claims he entered the United States in 2016. (*Id.*, PageID 3-4, ¶8, 10; Declaration of John Wissel, Exhibit A, at 2, ¶¶2, 4.) Petitioner entered the United States at San Ysidro Port of Entry and did not have a valid visa or other entry document. (Wissel Decl., Ex. A, at 2, ¶4.)

Petitioner was issued a Notice to Appear on November 22, 2022. (Wissel Decl., Ex. A, at 2, ¶4.) He applied for asylum but it was denied by an Immigration Judge. (Petition, ECF 1, PageID 4, ¶10-11; Wissel Decl., Ex. A, at 2, ¶5.)

On April 15, 2010, he was ordered removed from the United States, and subsequently, released on supervision pursuant to 8 U.S.C. § 1231(a)(3). (Petition, ECF 1, PageID 3, ¶6; Wissel Decl., Ex. A, at 2, ¶5.) Petitioner appealed the Immigration Judge's decision to the BIA but it was dismissed on September 15, 2022. (Wissel Decl., Ex. A, at 2, ¶5.)

Since August 13, 2025, Petitioner has been in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Butler County Correctional Complex after being detained after an ICE check-in appointment. (*Id.*, at PageID 3-4, ¶¶8, 13; Wissel Decl., Ex. A, at 2, ¶7.) He has been detained for just over a month. (Petition, ECF 1, PageID 4, ¶14.)

On August 25, 2025, ICE Enforcement and Removal Operations ("ERO") requested a travel document for Petitioner from the Gambian Consulate. (Wissel Decl., Ex. A, at 2, ¶8.)

On September 18, 2025, Petitioner Touray was interviewed regarding the travel document request by the Gambian Consulate. (*Id.*)

ICE ERO expects the Gambian Consulate will issue the Petitioner's travel document by September 29, 2025. (Wissel Decl., Ex. A, at 2, ¶8.)

ICE ERO intends to move Petitioner to a detention facility in Alexandria, Louisiana tomorrow, September 27, 2025. (*Id.* at ¶9.)

On September 28, 2025, Petitioner is scheduled for transfer from Louisiana to Mesa, Arizona for removal from the United States. He will be removed to Gambia from the United States, from Mesa, Arizona, on October 1, 2025. (*Id.*)

Thus, ICE believes there is a significant likelihood Touray will be removed in the reasonably foreseeable future, that is: on Wednesday, October 1, 2025. (Wissel Decl., at 2-3, ¶¶9-11.)

This Petition was filed on September 16, 2025, alleging that he has been unlawfully taken into custody and detained, in violation the Due Process Clause of Fifth Amendment to the United States Constitution, and the Immigration and Nationality Act ("INA") § 241(a), 8 U.S.C. § 1231(a). (Petition, ECF 1, PageID 5-7, ¶¶23-26, 27-37.)

Petitioner claims that this action arises under the Due Process Clause of the Fifth Amendment and the INA. (*Id.* at PageID 2, ¶4.) He seeks relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2001 *et seq.* and the All Writs Act, 28 U.S.C. § 1651. (*Id.* at ¶¶4-5.)

II. LEGAL AND STATUTORY BACKGROUND

"The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). "If the immigration judge decides that the alien is inadmissible or deportable and that the alien is not entitled to any of the relief or protection that he requested, the immigration judge will issue an order of removal." *Id.* at 528 (citing 8 U.S.C. § 1229a(c)(5)).

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

The statute referring to a 90-day removal period, 8 U.S.C. § 1231(a)(1)(A), holds: "Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." *Martinez v. Larose*, 968 F.3d 555, 559 (6th Cir. 2020).

"The removal period is defined as beginning on the latest of three events: (1) "[t]he date the order of removal becomes administratively final"; (2) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* at 559–60 (citing 8 U.S.C. § 1231(a)(1)(B)).

Regarding detaining an alien beyond the 90-day period, 8 U.S.C. § 1231(a)(6) states:

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

"§ 1231(a)(3) allows for supervised release after the 90-day removal period expires '[i]f the alien does not leave or is not removed' during that time period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021).

Once the 90-day removal period has elapsed, the alien becomes subject to 8 U.S.C. § 1231(a)(6) which makes detention discretionary. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 639 (D. Mass. 2018). "Continued detention under this provision creates the 'post-removal-period.'" *Id.* "[I]n enacting § 1231, Congress and the President anticipated that not all aliens ordered removed would be deported during the removal period. *See* § 1231(a)(3) (referring to 'an alien' who 'does not leave ... within the removal period')." *Jimenez v. Cronen*, 317 F. Supp. 3d at 651. Thus, 8 U.S.C. § 1231 expressly anticipates detention beyond the 90-day removal period.

III. LAW AND ARGUMENT

Petitioner seeks declaratory relief and release from detention and for this Court to enjoin his pending removal. Despite having a valid final order of removal, he argues that his detention is not authorized because his final order somehow expired. (Petition, ECF 1, PageID 6-7, ¶¶27-37.) Petitioner concedes individuals may be detained beyond the removal period pursuant to 8 U.S.C. § 1231(a)(6), if they are unlikely to comply with the order of removal, found to be a risk to the community, or

likely to be removed in the reasonably foreseeable future. (*Id.*, PageID 6, ¶31.) He claims that because the initial 90-day removal period expired, and he was released on supervision, and should not be detained now. (*Id.*, PageID 7, ¶¶33-37.)

However, there is no authority supporting his assertion. Petitioner is asking this Court to stop his removal, which this Court has no jurisdiction to do. Thus, the Court should deny and dismiss his Petition.

IV. STANDARD OF REVIEW

This Court should begin its analysis with the threshold issue of "whether this the Court has subject matter jurisdiction." *See e.g., Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586 (N.D. Ohio Aug. 7, 2025) (citing *Karki v. Jones*, Case No. 1:25-cv-281, 2025 WL 1638070, at *3 (S.D. Ohio June 9, 2025) ("The fundamental question of subject matter jurisdiction must precede any analysis of the merits on this matter.").

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts are courts with limited jurisdiction and may only hear cases that are "authorized by Constitution and statute." *Id.* If at any time, the court determines that it lacks subject-matter jurisdiction, that court must dismiss the action in front of them. *Mich. Emp't Sec. Comm'n v. Wolverine Radio Co.*, 930 F.2d 1132 (6th Cir. 1991).

The requirement that a plaintiff establish subject-matter jurisdiction "as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (some internal quotation marks omitted).

A motion under Fed. R. Civ. P. 12(b)(1) can raise facial or factual attacks. *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025). Regardless of which attack is used, the plaintiff bears the burden of persuading the Court that subject matter jurisdiction exists. *Dismas Charities, Inc. v. U.S. Dep't of Justice*, 401 F.3d 666, 671 (6th Cir. 2005).

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.

V. THIS COURT LACKS JURISDICTION

A. This Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252

In reality, Petitioner's challenge to his detention, challenges his imminent removal. The Court lacks jurisdiction to hear a challenge to Petitioner's removal under 8 U.S.C. § 1252. As such, this Court should deny the Petition and dismiss this action for lack of subject matter jurisdiction. In enacting the REAL ID Act, Congress limited the jurisdiction of federal courts through 8 U.S.C. § 1252(g) as follows:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), *including section 2241 of title 28,* or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added). "In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order." *Rranxburgaj v. Wolf,* 825 F. App'x 278, 283 (6th Cir. 2020). This holds true "whether or not [federal courts] agree with ICE's decision to execute [a petitioner's] removal order." *Id.*

These types of claims are barred under 8 U.S.C. §1252(g). This statute 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 Comm. ("AADC")*, 525 U.S. 471, 482 (1999).

The Sixth Circuit and including other Courts of Appeals have consistently held that similar petitioners' challenges to removal are barred by § 1252(g). *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").

8 U.S.C. § 1252(g) therefore limits jurisdiction as it relates to claims arising from such execution of removal orders—even if federal question jurisdiction would otherwise be proper. *See Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010). By its terms, this statutory limitation also applies to habeas relief under 28 U.S.C. § 2241, which would typically provide jurisdiction over cases where an alien is held in custody in violation of the Constitution or the laws of the United States. *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001).

B. Sections 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 have appealed 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. § 1252(b)(9).

Thus, to obtain habeas relief, Petitioner must not merely show that he is "in custody," but rather that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n.3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'" quoting 28 U.S.C. § 2254(a)). Petitioner cannot meet this burden. Therefore, this Court lacks jurisdiction to consider Petitioner's challenge to his detention and pending removal. Thus, the Petition should be denied and dismissed.

VI. PETITIONER'S DETENTION PENDING REMOVAL IS LAWFUL

A. There is No Time Limit on Enforcing Petitioner's Order of Removal.

Petitioner does not contest the fact that he has valid removal order. He also does not contest that he is inadmissible under 8 U.S.C. § 1182. He claims that because the Respondent released him after the initial 90-day removal period following the date the order became final, it has forfeited its opportunity and has no authorization to detain (and consequently remove) him now. (Petition, ECF 1, PageID 6-7, ¶¶27-37.)

There is no question that ICE has authority to detain Petitioner during the removal process. "Detention during removal proceedings is a constitutionally permissible part of [the removal] process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

Moreover, immigration officials retain discretion not to execute a final order of removal within 90 days. *Arizona v. Biden*, 40 F.4th 375, 391 (6th Cir. 2022). "Immigration authorities, as the Supreme Court has made clear, have considerable discretion over whom to arrest and remove." *Id.* (citing *Arizona v. U.S.*, 567 U.S. 387, 396 (2012)). Just because immigration authorities did not remove Petitioner within 90 days of his removal order, does not mean they cannot remove him now. His final order of removal remains valid.

Petitioner claims that the language in 8 U.S.C. § 1231(a)(1)(A) limits the removal period to 90 days. (Petition, ECF 1, PageID 6, ¶29.) § 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." The Sixth Circuit addressed this issue and explained:

> "Except as otherwise provided," it says that, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." *Id.* But Congress itself appreciated that removal would not always occur within 90 days. It permitted supervised release—release from custody—"[i]f the alien does not leave or is not removed within the removal period." *Id.* § 1231(a)(3). Combined with the basic principle that "[a]t each stage" of the removal process, "the Executive has discretion to abandon the endeavor" to remove someone, *Reno*, 525 U.S. at 483, 119 S.Ct. 936, *all of this means that immigration officials retain some discretion not to execute a final order of removal within 90 days.*

Arizona, 40 F.4th at, 391 (emphasis added). Indeed, "the use of 'shall' does not automatically create a judicially enforceable mandate, especially when criminal or civil law enforcement is at issue." *Id.* citing *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 761–62, (2005). The Petitioner relies upon *Zadyvdas v. Davis*, 533 U.S. 678, 689-90 (2001), and the statutory language to support his Petition. (Petition, ECF 1, PageID 6, ¶¶32, 36.)

In keeping with the discretion afforded in 8 U.S.C. § 1231(a)(3), ICE released Touray after his removal period expired. (Petition, ECF 1, PageID 4, ¶12.) DHS regulations later permitted ICE to detain Petitioner in order to effectuate his removal. *See* 8 C.F.R. § 241.4. Addressing the procedure of revocation of release after the removal period, § 241.4(l)(2)(iii), states: "Release may be revoked in the exercise of discretion when, in the opinion of the revoking official...it is appropriate to enforce a removal order..." 8 C.F.R. § 241.4(l)(2)(iii). That is precisely what happened here. ICE is enforcing Touray's Removal Order and removing him to his home country, Gambia, on October 1, 2025. Indeed, ICE is authorized to end Petitioner's supervised release and detain him while processing his removal. *Id.*

In similar recent cases, other district courts have rejected this same argument. *See Ghamelian v. Baker*, No. 25-02106, 2025 WL 2049981, at *1 (D. Md. July 22, 2025) (neither language of 8 U.S.C. § 1231(a)(6) nor *Zadvydas* supports notion that government's ability to detain alien expired years ago); *see also Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586, *5-*11, *11 (N.D. Ohio Aug. 7, 2025) (8 C.F.R. § 241.4(l)(2)(iii) expressly permits detaining an alien when enforcing removal order and recognizing "requests for travel documents support finding of reasonably foreseeable removal.")

Further, the Supreme Court's decision in *Zadvydas v. Davis* does not create a time limitation to Touray's Removal Order. *See* 533 U.S. 678 (2001). In fact, *Zadvydas* does not apply to Petitioner's case at all because he has only been detained for only about one month and his removal is reasonably foreseeable. (Wissel Decl., Ex. A, at 2-3, ¶¶9-11.) That is, he will be removed on October 1, 2025. (*Id.* at ¶9.) Indeed, "[w]hen a removal is foreseeable, detention does not violate due process as set out in *Zadvydas* . . . ." *Martinez v. Larose*, 968 F.3d 555, 557 (6th Cir. 2020).

Petitioner's one-month detention does not violate due process because *Zadvydas* analysis only applies where there is a "danger of indefinite detention [with] no significant likelihood of removal in the reasonably foreseeable future." *Jiang Lu v. U.S. ICE*, 22 F. Supp. 3d 839, 843 (N.D. Ohio 2014); (Petition, ECF 1, PageID 4, ¶¶14-16; Wissel Decl., Ex. A, at 2, ¶¶9-11.) Petitioner will be removed next Wednesday, October 1, 2025. (*Id.* at ¶9.) Thus, *Zadvydas* does not apply here, and Petitioner's detention is not in violation of the Constitution or laws or treaties of the United

States. Consequently, this Court lacks subject matter jurisdiction, and the Petition should be denied and dismissed.

B. Petitioner was Afforded Due Process.

Petitioner's claim that his due process rights were violated is also without merit. The Supreme Court has also long recognized that immigration-related decisions of executive branch officers as in this case afford due process in the absence of judicial review. "[A]s to 'foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). "Since then, the [Supreme] Court has often reiterated this important rule." *Id.* (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953), and *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative").

The essential requirements of procedural due process are: (1) notice; and (2) an opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970); *Gorman v. Univ. of R.I.*, 837 F.2d 7, 12 (1st Cir. 1988). Petitioner cannot and does not demonstrate that he has been deprived of these requirements. He does not contest that he entered the United States without a valid visa or entry document. Petitioner

appealed his removal to the BIA, and it was denied. Only now does he wish to file a motion to reopen his removal proceedings in immigration court, and request a stay of his removal with the BIA. Petitioner has been detained a month and has yet to file a motion to reopen or motion to stay with the BIA. Petitioner received the required due process. As such, his due process claim must fail.

VII. CONCLUSION

Petitioner's detention pending removal is lawful. Petitioner's removal is lawful and this Court lacks jurisdiction to enjoin action taken to effect Petitioner's removal to Gambia. Therefore, this Court must deny relief and dismiss the action.

Respectfully submitted,

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