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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 EMMANUEL I. McSWEENEY,

12 Petitioner,

13 v.
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15 WARDEN OF THE OTAY MESA
16 DETENTION FACILITY, et al.,

17 Respondents.
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Case No.: 25-cv-02488-RBM-DEB

**RESPONDENTS' RESPONSE IN
OPPOSITION TO PETITIONER'S
HABEAS PEITION**

I.

INTRODUCTION

Petitioner is expected to be removed to Haiti within a week. He has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native of the Bahamas and a citizen of Haiti. [See Form I-213, dated March 18, 2025, Table of Exhibits (TOE), Exhibit 4.]¹ On August 15, 1998, Petitioner was admitted into the United States on a B2 visitor nonimmigrant visa at the Miami International Airport in Miami, Florida, with instructions to depart on or before February 14, 1999. *Id.* Petitioner remained in the United States beyond February 14, 1999, without authorization from the Department of Homeland Security (DHS). *Id.* On June 7, 2020, U.S. Customs and Immigration Services (USCIS) granted Petitioner's Form I-821, Application for Temporary Protected Status, valid through July 22, 2011. [See Form I-213, dated February 26, 2020, Exhibit 1.] On February 15, 2012, USCIS granted Petitioner's Form I-821, valid through January 22, 2013. *Id.* On March 5 and April 9, 2013, USCIS rejected Petitioner's Form I-821D, Deferred Action for Childhood Arrival (DACA). *Id.* On December 9, 2013, USCIS granted Petitioner's Form I-821, valid through July 22, 2014. *Id.* On August 26, 2014, USCIS granted Petitioner's Form I-821, valid through January 22, 2016. *Id.* On April 11, 2018, USCIS denied Petitioner's Form I-821. *Id.*

On February 25, 2020, the U.S. Immigration and Customs Enforcement's (ICE) Miami Criminal Alien Program (CAP) encountered Petitioner in Broward County Jail located in Broward County, Florida after his February 20, 2020 arrest for cocaine possession

¹ The exhibits referenced are true and correct copies, with redactions of private information, of documents obtained from ICE counsel. The exhibits are attached to the TOE filed concurrently with this response.

1 and February 25, 2020 arrest for burglary. [See Form I-213, dated February 26, 2020,
2 Exhibit 1.] The CAP team lodged an Immigration Detainer (I-247) with the Broward County
3 Jail. *Id.* On March 4, 2020, Petitioner was placed into removal proceedings and charged
4 with removability pursuant to 8 U.S.C. § 1227(a)(1)(B), as a visa overstay, and 8 U.S.C.
5 § 1227(a)(2)(B)(i), as an alien who, after admission, has received a conviction related to a
6 controlled substance. [Board of Immigration Appeals (BIA) Decision, Exhibit 3.]

7 On May 21, 2020, an Immigration Judge (IJ) ordered Petitioner removed from the
8 United States to the Bahamas or, in the alternative, Haiti. [Removal Order, Exhibit 2;
9 Declaration of Jason Cole (“Cole Decl.”), ¶ 3.] On April 20, 2021, the BIA dismissed
10 Petitioner’s appeal of the IJ’s removal order. [BIA Decision, Exhibit 3.] Petitioner’s
11 removal order became final on April 20, 2021. *See* 8 C.F.R. § 1241.1(a). On December 10,
12 2020, Petitioner was released from ICE custody on an order of supervised release. [I-213,
13 dated March 18, 2025, Exhibit 4; Cole Decl., ¶ 4.] On January 7, 2024, Petitioner was
14 arrested by the North Lauderdale Police Department for possession of oxycodone,
15 possession of amphetamine, possession of a weapon or ammo by a convicted Florida felon,
16 operating a motor vehicle without a valid driver’s license, and multiple other traffic
17 violations. [I-213, dated March 18, 2025, Exhibit 4.] On March 18, 2025, Petitioner was re-
18 detained by ICE to effectuate his removal from the United States. [*Id.*; Cole Decl., ¶ 5.]²

19
20 ² The Form I-213, dated February 26, 2020 [Exhibit 1] indicates Petitioner has an extensive
21 criminal history. It includes a February 25, 2020 arrest for burglary, a June 28, 2019 arrest
22 for cocaine possession, an October 2, 2018 arrest for resisting an officer, a July 6, 2018
23 arrest for drug possession, a July 6, 2018 arrest for possession of marijuana (which resulted
24 in a conviction on September 28, 2018), a July 7, 2015 arrest for resisting an officer (which
25 resulted in a conviction on February 3, 2016), a July 7, 2015 arrest for hallucinogen
26 possession (which resulted in a conviction on February 3, 2016), a March 20, 2014 arrest
27 for larceny (which resulted in a conviction on May 22, 2014), a March 20, 2014 arrest for
28 burglary (which resulted in a conviction on May 22, 2014), a March 31, 2011 arrest for
larceny (which resulted in a conviction on July 12, 2011), a March 31, 2011 arrest for
burglary (which resulted in a conviction on July 12, 2011), a March 18, 2011 arrest for
marijuana possession (which resulted in a conviction on July 13, 2011), and a January 18,
2011 arrest for fraud – impersonating (which resulted in a conviction on July 12, 2011).

1 On September 11, 2025, ICE determined that Petitioner should remain in custody
2 after a review of his custody status. [Decision to Continue Detention, Exhibit 4.] ICE based
3 its decision, in part, on Petitioner's numerous criminal convictions, including for
4 hallucinogen possession, fraud-impersonating, burglary and grand theft. *Id.* ICE concluded
5 that Petitioner poses both a risk to public safety and a significant flight risk. *Id.* He also has
6 not demonstrated to ICE that he is not a danger to the community or U.S. security. *Id.* On
7 September 19, 2025, as part of the review of his detention status, Petitioner was provided a
8 personal interview pursuant to 8 C.F.R. 241.4(i)(3). [Notice of Interview and Notes, Exhibit
9 6; Cole Decl., ¶ 10.]

10 As discussed above, the IJ ordered Petitioner removed to the Bahamas or, in the
11 alternative Haiti. On September 23, 2025, the Bahamian Consulate provided ICE
12 Enforcement and Removal Operations (ERO) with a letter confirming that the Petitioner is
13 not a citizen of the Bahamas. [Cole Decl., ¶ 10.] On September 25, 2025, a travel document
14 request was sent to ERO's Removal and International Operations (RIO) Unit to obtain a
15 travel document to Haiti. *Id.* at ¶ 11.

16 On September 30, 2025, a travel document for Haiti was obtained for the Petitioner.
17 *Id.* ERO is currently working on placing the Petitioner on the next available flight to Haiti,
18 which is anticipated to occur within a week. *Id.* at ¶ 12. Once the Petitioner is confirmed for
19 a flight he will be transferred to another ICE facility for processing. *Id.*

20 III.

21 ARGUMENT

22 A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

23 Petitioner bears the burden of establishing that this Court has subject matter
24 jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770,
25 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold
26 matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack
27 jurisdiction over any claim or cause of action arising from any decision to commence or
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1 adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) (“Except
 2 as provided in this section and *notwithstanding any other provision of law* (statutory or
 3 nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and
 4 sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or
 5 claim by or on behalf of any alien arising from the decision or action by the Attorney
 6 General to commence proceedings, adjudicate cases, or *execute removal orders* against any
 7 alien under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination*
 8 *Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
 9 attention upon, and make special provision for, judicial review of the Attorney General’s
 10 discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing]
 11 removal orders”—which represent the initiation or prosecution of various stages in the
 12 deportation process.”). In other words, § 1252(g) removes district court jurisdiction over
 13 “three discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
 14 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
 15 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action by
 16 the Attorney General to . . . execute removal orders,” over which Congress has explicitly
 17 foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should deny the pending
 18 motion and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

19 **B. Petitioner is Lawfully Detained**

20 Alternatively, the petition should be denied because Petitioner is properly detained
 21 under 8 U.S.C. § 1231(a). Respondents also have acquired the necessary travel document
 22 to effectuate Petitioner’s removal to Haiti. His removal is expected to occur within a week.
 23 Under the circumstances, Petitioner has not met his burden of rebutting the presumptively
 24 reasonable period of detention.

25 An alien ordered removed must be detained for 90 days pending the government’s
 26 efforts to secure the alien’s removal through negotiations with foreign governments. *See* 8
 27 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien during the 90-day
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1 removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The statute “limits
2 an alien’s post-removal detention to a period reasonably necessary to bring about the alien’s
3 removal from the United States” and does not permit “indefinite detention.” *Zadvydas*, 533
4 U.S. at 689. The Supreme Court has held that a six-month period of post-removal detention
5 constitutes a “presumptively reasonable period of detention.” *Id.* at 683; *see also Clark v.*
6 *Martinez*, 543 U.S. 371, 377 (2005) (“[T]he presumptive period during which the detention
7 of an alien is reasonably necessary to effectuate his removal is six months...”); *Lema v.*
8 *INS*, 341 F.3d 853, 856 (9th Cir. 2003). Release is not mandated after the expiration of the
9 six-month period unless “there is no significant likelihood of removal in the reasonably
10 foreseeable future.” *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

11 In *Zadvydas*, the Supreme Court held that “the habeas court must ask whether the
12 detention in question exceeds a period reasonably necessary to secure removal. It should
13 measure reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring*
14 *the alien’s presence at the moment of removal.*” *Zadvydas v. Davis*, 533 U.S. at 699
15 (emphasis added). The Court in *Zadvydas* therefore recognized that detention is
16 presumptively reasonable pending efforts to obtain travel documents, because the
17 noncitizen’s assistance is needed to obtain the travel documents, and a noncitizen who is
18 subject to an imminent, executable warrant of removal becomes a significant flight risk,
19 especially if he or she is aware that it is imminent.

20 The Court in *Zadvydas* also held that the detention could exceed six months: “This
21 6-month presumption, of course, does not mean that every alien not removed must be
22 released after six months. To the contrary, an alien may be held in confinement until it has
23 been determined that there is no significant likelihood of removal in the reasonably
24 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
25 reason to believe that there is no significant likelihood of removal in the reasonably
26 foreseeable future, the Government must respond with evidence sufficient to rebut that
27 showing and that the noncitizen has the initial burden of proving that removal is not
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1 significantly likely.” *Id.*

2 In recent cases involving re-detention to effect removal, courts have recognized that
3 ICE has a presumptively reasonable period of six months to obtain travel documents. *See*
4 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025)
5 (“The government is entitled to its six-month presumptive period before Petitioner’s
6 continued § 1231(a)(6) detention poses a constitutional issue”); *Guerra-Castro v. Parra*,
7 No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (“The Court
8 finds that the Petition is premature because Petitioner has not been detained for more than
9 six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month
10 detention is lawful under *Zadvydas*.”); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025
11 WL 1895479, at *8 (S.D. Fla. July 8, 2025) (“Because Grigorian has been in custody for
12 fifteen days, his detention does not violate the implicit six-month period read into the post-
13 removal-period detention statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28
14 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and*
15 *recommendation adopted*, No. CV 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June
16 5, 2017) (“Nhean’s 90-day removal period began to run on October 12, 2010, when his
17 removal order became final, and he was released after 91 days of custody to supervised
18 release on January 11, 2011. Nhean was transferred back into ICE custody on August 26,
19 2016. Nhean’s detention was presumptively reasonable for an additional 90 days (six
20 months in total)”); *cited in Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6
21 (N.D. Cal. Apr. 19, 2018); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809,
22 at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and
23 then revokes the release based on changed circumstances, “the revocation would merely
24 restart the 90-day removal period, not necessarily the presumptively reasonable six-month
25 detention period under *Zadvydas*”).

26 Here, Petitioner cannot show there is no significant likelihood of removal in the
27 reasonably foreseeable future. Petitioner’s claim alleging that his home country does not
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1 recognize him as a citizen, and that he is not a citizen of any country, is unfounded. [Petition
2 at ¶ 19.] Haiti has issued travel documents for his return. ICE now is attempting to secure a
3 flight itinerary for Petitioner. And it is confident Petitioner can be removed to Haiti within
4 a week. Last year, ICE removed 792 Haitian citizens to Haiti. *See ICE Fiscal Year 2024*
5 *Annual Report*, at 99 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

6 Further, Petitioner's case does not implicate the impossibility of repatriation in
7 *Zadvydas*. *Zadvydas* was stateless, and both countries to which he potentially could have
8 been deported (the country where he was born and the country of which his parents were
9 citizens) refused to accept him because he was not a citizen. *See id.*, at 684. The deportation
10 of the other petitioner in *Zadvydas*, Ma, was prevented, because there was no repatriation
11 agreement at that time between the United States and Cambodia. *Id.* at 685. Here, ICE has
12 been able to obtain travel documents from Haiti and is also able to remove him there. ICE
13 is actively working to effect Petitioner's removal to Haiti and his continued detention is not
14 unconstitutionally indefinite.

15 On this record, Petitioner cannot sustain his burden; and ICE should be permitted to
16 effectuate his removal. "[E]vidence of progress, albeit slow progress, in negotiating a
17 petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows
18 unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D.
19 Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not
20 violate *Zadvydas* given respondent's production of evidence showing governments'
21 negotiations are in progress and there is reason to believe that removal is likely in the
22 foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH AGS,
23 ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this stage in the litigation does
24 not support a finding that there is no significant likelihood of Petitioner's removal in the
25 reasonably foreseeable future.") [Exs. 35-39.]; *Marquez v. Wolf*, Case No. 20-cv-1769-
26 WQH-BLM, 2020 WL 6044080 at *3 (denying petition because "Respondents have set
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1 forth evidence that demonstrates progress and the reasons for the delay in Petitioner's
2 removal").

3 IV.

4 CONCLUSION

5 For the foregoing reasons, Respondents respectfully request that the Court dismiss
6 the petition.

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8 DATED: September 30, 2025

Respectfully submitted,

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10 ADAM GORDON
United States Attorney

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12 s/ Ernest Cordero, Jr.
ERNEST CORDERO, JR.
13 Attorneys for Respondents
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10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11 EMMANUEL I. McSWEENEY,
12
13 Petitioner,

14 v.

15 WARDEN OF THE OTAY MESA
16 DETENTION FACILITY, et al.,
17 Respondents.

Case No.: 25-cv-02488-RBM-DEB

DECLARATION OF JASON COLE

18
19 I, Jason Cole, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury
20 that the following statements are true and correct, to the best of my knowledge, information,
21 and belief:

22 1. I am currently employed by the U.S. Department of Homeland Security (DHS),
23 U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations
24 (ERO), as a Deportation Officer (DO) assigned to the Otay Mesa suboffice of the ICE ERO
25 San Diego Field Office.

26 2. I have been employed by ICE as a enforcement officer since September 28,
27 2020, serving as a Deportation Officer since September 28, 2020. I currently remain serving
28 in that position. As a DO, my responsibilities include case management of individuals

1 detained by ICE at the Otay Mesa Detention Center in Otay Mesa, California. This
2 declaration is based upon my personal knowledge and experience as a law enforcement
3 officer and information provided to me in my official capacity as a DO for the Otay Mesa
4 suboffice of the ICE ERO San Diego Field Office, as well as my review of government
5 databases and documentation relating to Petitioner Emmanuel I. McSweeney (Petitioner).

6 3. On May 21, 2020, Petitioner was ordered removed to the Bahamas or, in the
7 alternative, Haiti.

8 4. On December 10, 2020, Petitioner was released from ICE custody under an
9 order of supervision.

10 5. On March 18, 2025, ICE re-detained Petitioner to execute his removal order to
11 Haiti or, in the alternative, the Bahamas.

12 6. ICE is not seeking to remove Petitioner to a third country.

13 7. To effectuate Petitioner's removal to Haiti, ERO must acquire a travel
14 document and schedule a flight for Petitioner. Since Petitioner was re-detained, ERO has
15 worked expeditiously to effectuate Petitioner's removal to Haiti. These removal efforts
16 remain ongoing.

17 8. In order to obtain travel documentation to remove the Petitioner to Haiti, ERO had
18 to first receive confirmation from the Bahamian Consulate General on the Petitioner's
19 citizenship status in the Bahamas.

20 9. On August 28, 2025, ERO contacted the Bahamian Consulate who indicated that
21 the Petitioner did not appear to be a citizen of the Bahamas. ERO requested the Bahamian
22 Consulate to provide a letter confirming this so that it could be submitted with the travel
23 document request to Haiti.

24 10. On September 19, 2025, ERO conducted a personal interview of the Petitioner
25 pursuant to 8 C.F.R. § 241.4.

26 11. On September 23, 2025, the Bahamian Consulate provided ERO with a letter
27 confirming that the Petitioner is not a citizen of the Bahamas.
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1 12. On September 25, 2025, a travel document request was sent to ERO's Removal
2 and International Operations (RIO) Unit to obtain a travel document to Haiti. On September
3 30, 2025, a travel document for Haiti was obtained for the Petitioner.

4 13. ERO is currently working on placing the Petitioner on the next available flight
5 to Haiti, which is anticipated to occur within a week. Once the Petitioner is confirmed for a
6 flight he will be transferred to another ICE facility for processing.

7
8 I declare under penalty of perjury of the laws of the United States of America that the
9 foregoing is true and correct.

10 Executed this 30th day of September 2025.

11 JASON N
12 COLE

Digitally signed by JASON
N COLE
Date: 2025.09.30
14:47:08 -07'00'

13 Jason Cole
14 Deportation Officer
15 San Diego Field Office
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13 Petitioner,

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16 DETENTION FACILITY, et al.,
17 Respondents.

Case No.: 25-cv-02488-RBM-DEB

TABLE OF EXHIBITS

18 **EXHIBITS**

- 19
20 1. Form I-213, Record of Deportable/Inadmissible Alien, dated February 26, 2020
21 2. Order of the Immigration Judge, dated May 21, 2020
22 3. Notice of Board of Immigration Appeals Decision, and attached decision, dated April
23 20, 2021
24 4. Form I-213, Record of Deportable/Inadmissible Alien, dated March 18, 2020
25 5. Decision to Continue Detention, dated September 11, 2025
26 6. Notice of Interview, dated August 27, 2025, and Notes of Interview, dated September 19,
27 2025
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