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10 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 Mohamed Hassan Barka,
12 Petitioner,

13 v.

14 Chief Counsel DHS,
15 Respondent.

Case No. 2:25-cv-01781-GMN-MDC

**Respondent's Response to Petitioner's
Petition for Writ of Habeas Corpus,
ECF No. 6**

16
17 **I. Introduction**

18 Respondent, Kristi Noem, Secretary of the Department of Homeland Security
19 (erroneously sued herein as Chief Counsel DHS), through counsel, Sigal Chattah, First
20 Assistant United States Attorney for the District of Nevada, and Summer A. Johnson,
21 Assistant United States Attorney, hereby files this response to the Petition for Writ of Habeas
22 Corpus filed by Mohamed Hassan Barka ("Petitioner"). As explained herein, Petitioner's
23 continued detention is lawful under statutory authority and Supreme Court precedent, which
24 allow for such detention after a final order of removal. Respondent moves to dismiss the
25 petition, or alternatively, request that the Court stay this matter pending further proceedings
26 in furtherance of Petitioner's removal.

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1 **II. Factual Background**

2 Petitioner is a native and citizen of Egypt. ECF No. 6 at 7. At an unknown time and
3 unknown place, Petitioner entered the United States. On or around September 2024,
4 Petitioner was taken into DHS custody. ECF No. 6 at 5. On January 15, 2025, an
5 Immigration Judge ordered that Petitioner was inadmissible under sections 212(a)(7)(i)(1)
6 and 212(a)(6)(A)(i) of the INA. *See* Exhibit A, at 1. The IJ denied Petitioner’s request for
7 asylum and withholding of removal under the Convention Against Torture. *Id.* at 1. The IJ
8 ordered that Petitioner be removed from the United States but withheld the removal as to
9 Egypt. *See* Exhibit A at 1, 3. The court alternately ordered Petitioner removed to Italy. *Id.*
10 at 3. Both DHS and Petitioner waived appeal of the order. *Id.* at 4. Following the Order of
11 Removal, Petitioner continued his detention in DHS custody. During his detention, DHS
12 has sought to obtain travel documents to effectuate Petitioner’s removal to Italy.

13 Petitioner filed this action on September 22, 2025, including a Petition for Writ of
14 Habeas Corpus. *See* ECF Nos. 1. The Court ordered the Petition be filed on November 3,
15 2025 and ordered the Respondent to respond to the Petition. ECF No. 5. This response
16 follows.

17 **III. Argument**

18 **A. The Court Lacks Jurisdiction Over this Habeas Matter Because the Warden has**
19 **Not been Named.**

20 It is axiomatic that “[t]he district courts of the United States . . . are courts of
21 limited jurisdiction. They possess only that power authorized by Constitution and
22 statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal
23 quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the
24 Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S.
25 Ct. 1959, 1974 n. 20 (2020).

26 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal
27 habeas petitions. To warrant a grant of writ of habeas corpus, the burden is on the
28 petitioner to prove that his or her custody is in violation of the Constitution, laws, or

1 treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
2 969 n. 16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

3 Section 2242 states that habeas petitions “shall allege the facts concerning the
4 applicant's commitment or detention, the name of the person who has custody over him
5 and by virtue of what claim or authority, if known.” 28 U.S.C. § 2242. The “one proper
6 respondent” in a § 2241 immigration proceeding challenging continued detention is “the
7 warden of the facility where the prisoner is being held, not the Attorney General or some
8 other remote supervisory official.” *See Doe v. Garland*, 109 F.4th 1188, 1195 (9th Cir. 2024)
9 (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2004)).
10 The Court lacks jurisdiction over a § 2241 petition that fails to name the proper
11 respondent. *Gurmeet Singh v. Field Office Dir., S.F. Field Office*, No. 24-cv-03472-RMI, 2024
12 U.S. Dist. LEXIS 161826, at *2 (N.D. Cal. Sep. 9, 2024).

13 As noted above, the required respondent in a habeas matter must be “the warden of
14 the facility where the prisoner is being held, not the Attorney General or some other
15 remote supervisory official.” *See Doe v. Garland*, 109 F.4th at 1195. Petitioner is currently
16 housed at the Nevada Southern Detention Center. ECF No. 6 at 1. John Mattos is the
17 current warden of the place in which Petitioner is confined¹ and he is not named in this
18 action (nor is the facility.) As a result, the Court lacks jurisdiction over a § 2241 petition
19 and this matter should be dismissed.

20 **B. ICE is Authorized to Detain and Deport Petitioner**

21 ICE can lawfully detain Petitioner because he is subject to a final order of removal
22 and can be detained under 8 U.S.C. § 1231(a)(6). Second, following Supreme Court
23 precedent, Petitioner has not established the requisite “good reason to believe” that there is
24 no significant likelihood of his removal in the reasonably foreseeable future, as required
25 under *Zadvydas* to shift the burden to the government.

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¹ <https://www.corecivic.com/facilities/nevada-southern-detention-center> (last accessed November 26, 2025).

1 **1. ICE Lawfully Detained Petitioner Pursuant to 8 U.S.C. § 1231(a).**

2 ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the
3 detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs
4 immigration authorities to remove an individual with a final order of removal within a period
5 of 90 days, which is known as the "removal period." During the removal period, ICE must
6 detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE
7 can either release an individual pursuant to an Order of Supervision as directed by §
8 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention
9 beyond the removal period for three categories of individuals: (i) those who are inadmissible
10 to the United States pursuant to 212 of the INA (8 U.S.C. § 1182); (ii) those who are subject
11 to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
12 (iii) those whom immigration authorities have determined to be a risk to the community or
13 "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

14 Petitioner is outside the initial 90-day mandatory removal period which commenced
15 following his order of removal on January 15, 2025. However, he is still eligible for ICE
16 detention beyond the initial ninety days as he is subject to removal under section 212 of the
17 INA. (8 U.S.C. § 1182). Specifically, the IJ's Order of Removal found that Petitioner was
18 inadmissible under sections 212(a)(7)(i)(1) (alien does not possess a valid unexpired
19 immigrant visa, reentry permit, border crossing identification card, or other valid entry
20 document required by the INA) and 212(a)(6)(A)(i) (alien present in the United States
21 without being admitted or paroled, or who arrives in the United States at any time or place
22 other than as designated by the Attorney General) of the INA. *See* Exhibit A. This order is
23 now final.

24 Because Petitioner has been ordered removed pursuant to section 212(a)(7)(i)(1) and
25 212(a)(6)(A)(i) of the INA, ICE has statutory authority to detain Petitioner to effectuate his
26 removal order from the United States and he is not entitled to a bond hearing or release as
27 § 1231(a)(6) does not require such process. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574,
28 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings before

1 immigration judges or burdens of proof”). Petitioner’s detention is therefore lawful under §
2 1231(a)(6) and this Court should dismiss his Petition.

3 **2. Petitioner’s Habeas Petition has not Established Good Cause and His**
4 **Detention Does Not Run afoul of Zavydas.**

5 Under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court established
6 that detention for up to six months after a final order of removal is “presumptively
7 reasonable.” As the Court explained in *Zadvydas*, detention beyond the 90-day removal
8 period is justified when it is “reasonably necessary” to effectuate removal. *Id.* After six
9 months, the burden shifts to the petitioner to show “good reason to believe that there is no
10 significant likelihood of removal in the reasonably foreseeable future” before the burden
11 reverts to the government to rebut that showing *Id.* at 701. The Supreme Court has
12 recognized that “detention during deportation proceedings [is] a constitutionally valid aspect
13 of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating
14 “reasonableness” of detention, the touchstone is whether an alien’s detention continues to
15 serve “the statute’s basic purpose, namely, assuring the alien’s presence at the moment of
16 removal.” *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional violation for § 1231
17 detention, an individual must satisfy the *Zadvydas* test. See *Castaneda v. Perry*, 95 F.4th 750,
18 760 (4th Cir. 2024) (explaining that “*Zadvydas*, largely, if not entirely forecloses due process
19 challenges to § 1231 detention apart from the framework it established.”).

20 Here, Petitioner’s final Order of Removal was entered in January 2025. As a result,
21 Petitioner’s current period of post-removal-order detention has exceeded the six-month
22 timeframe that *Zadvydas* identifies as *presumptively reasonable*. But crossing that temporal
23 threshold does not itself entitle a detainee to relief. Once the six-month mark passes, the
24 burden shifts to the Petitioner to provide evidence giving rise to a “reason to believe” that
25 there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner
26 has not met that burden.

27 The Petition contains no factual allegations demonstrating that removal is not
28 reasonably foreseeable. Petitioner merely states that three countries have been contacted “but

1 none has accepted [him].” ECF No. 1-2 at 3. This assertion lacks the specificity necessary to
2 satisfy *Zadvydas*. It does not identify when the requests were made, the basis for any non-
3 acceptance, whether additional requests are pending, or whether DHS is continuing to
4 pursue removal efforts. Nor does it show that any country has affirmatively refused
5 repatriation or that further negotiations would be futile. Absent evidence that DHS has
6 reached a dead end—or that diplomatic channels have been exhausted—Petitioner has not
7 established the “good reason to believe” necessary to trigger further analysis under *Zadvydas*.

8 Accordingly, because Petitioner has not made the required showing for relief under
9 *Zadvydas*, his due process challenge lacks merit and the Petition should be denied.

10 **IV. Conclusion**

11 For the foregoing reasons, the Court lacks jurisdiction over the Petition because
12 Petitioner has failed to name the proper respondent. In addition, Petitioner’s continued
13 detention is authorized by 8 U.S.C. § 1231(a) and fully comports with the governing
14 framework set forth in *Zadvydas*. Petitioner has not met his burden to demonstrate that his
15 removal is not reasonably foreseeable, nor has he established any constitutional or statutory
16 violation warranting habeas relief. Accordingly, Respondent respectfully requests that the
17 Court dismiss the Petition in its entirety, or, in the alternative, stay the matter pending
18 further efforts to effectuate Petitioner’s removal.

19 Respectfully submitted this 26th day of November 2025.

20 SIGAL CHATTAH
21 First Assistant United States Attorney

22 /s/ Summer A. Johnson
23 SUMMER A. JOHNSON
24 Assistant United States Attorneys
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Certificate of Service

I, Summer A. Johnson, hereby certify that a copy of the foregoing **Respondent's Response to Petition for Writ of Habeas Corpus** was served via the CM/ECF Electronic File and Serve system, and to the following individuals by the stated service methods:

Via U.S. First Class Mail:

Mohamed Hassan Barka
Alien No. 249-391-058
Nevada Southern Detention Center
2190 East Mesquite Avenue
Pahrump NV 89060

Dated this 26th day of November 2025.

/s/ Summer A. Johnson
SUMMER A. JOHNSON
Assistant United States Attorney