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

MOMOHU KARAGA, Petitioner, v. KEVIN RAYCRAFT,[1] Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, Department of Homeland Security, Respondent.	Case No. 1:25-cv-00735 District Judge Susan J. Dlott Magistrate Judge Elizabeth Preston Deavers

RETURN OF WRIT

Petitioner, Momohu Karaga, is lawfully detained pursuant to 8 U.S.C § 1231(a) and this 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. (Petition, ECF 1.) Petitioner has raised no issues subject to judicial review, pled no facts inconsistent with due process, and cannot demonstrate his removal will not happen in the reasonably foreseeable future. Nor has Petitioner demonstrated that this Court can grant any relief requested. Therefore, this Court should deny and dismiss the petition pursuant to 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.

I. FACTUAL BACKGROUND

[1] Robert K. Lynch is no longer the Field Office Director for ERO, ICE. Kevin Raycraft is currently the Acting Field Office Director for ERO, ICE.

Petitioner, Momohu Karaga ("Petitioner" or "Karaga"), brings this action as a petition for habeas corpus under 28 U.S.C. § 2241. (Petition, ECF 1, PageID 1.) Karaga is a 22-year-old national and citizen of The Gambia and claims he entered the United States in 2022. (*Id.*, PageID 3-4, ¶¶8, 11; Declaration of Stephanie Parker, Exhibit A, at 1-2, ¶¶2, 4.) Petitioner entered the United States on or about May 2, 2022, near the Del Rio, Texas Port of Entry. (*Id.* at ¶4.)

Petitioner was found inadmissible, arrested, and processed for Expedited Removal, then served with an Expedited Removal Order. (*Id.*, at 2, ¶5.) He applied for asylum, but it was denied by the asylum office and an Immigration Judge. (Petition, ECF 1, PageID 4, ¶11; Parker Decl., Ex. A, at 2, ¶¶5-9.)

On June 29, 2022, he was ordered removed from the United States, and subsequently, released on supervision on October 28, 2022. (Petition, ECF 1, PageID 4, ¶¶12-13; Parker Decl., Ex. A, at 2, ¶¶9-10.) There is no evidence Petitioner appealed his removal order.

On October 1, 2025, after he reported to the ICE ERO office in Westerville, Ohio, Petitioner's supervision was revoked and he was taken into custody pending his order of removal to The Gambia. (Parker Decl., Ex. A, at 2, ¶11.) Petitioner does not allege any facts to support any allegation that ICE failed to provided notice that his supervision was revoked pursuant to his final order of removal. Nor is there any factual support that he did not receive an interview. (*See* Petition, ECF 1.)

Since October 1, 2025, Petitioner has been in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Butler County Correctional Complex. (*Id.*, at PageID 4, ¶14; Parker Decl., Ex. A, at 1-3, ¶¶3, 12.) As of November 21, 2025, he

has been detained for less than two months. (Petition, ECF 1, PageID 4, ¶15; Parker Decl., Ex. A, at 1-3, ¶¶3, 12.)

On October 14, 2025, ICE Enforcement and Removal Operations ("ERO") requested a travel document for Petitioner from The Gambia. (Parker Decl., Ex. A, at 3, ¶13.) The Gambia is reviewing travel document requests from the United States and Petitioner interviewed with The Gambian Consulate on November 17, 2025. (*Id.*, at 3, ¶¶13-14.) ICE has removed individuals from the United States to The Gambia and there is no reason to think Petitioner cannot be removed when ICE receives his travel document. (*Id.*, at 3, ¶¶14-15.)

ICE ERO expects Petitioner will be removed in the reasonably foreseeable future to The Gambia. (*Id.*, at 3, ¶13-16.)

Petitioner filed this Petition on October 16, 2025, alleging that he has been unlawfully taken into custody and detained, in violation of 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 5-10, 10-12, ¶¶23-43, 44-52.) Petitioner also requests attorneys' fees. (*Id.* at PageID 12, ¶53.)

Petitioner seeks declaratory and injunctive relief, release from custody (returned to supervision), and attorney's fees. (*Id.* at PageID 12, ¶¶1-7.)

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 revocation of supervision and 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 expired. (Petition, ECF 1, PageID 11-12, ¶¶50-52.) 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.* at PageID 8, 11, ¶¶36-37, 48.) He claims that because the initial 90-day removal period expired, and he was released on supervision, and has not violated the conditions of release, he should not be detained

now without notice and an opportunity to be heard. (*Id.* at PageID 8-10, ¶¶38-43.) Petitioner also claims his detention bears no relationship to the regulations designed to prevent dangers to the community and flight prior to removal, and therefore, does not serve a legitimate, nonpunitive objective. (*Id.* at ¶¶26-29.)

Petitioner relies on the INA and the Fifth Amendment's Due Process Clause of the U.S. Constitution. (*Id.* at PageID 9-11, ¶¶33-41.)

However, there is no authority supporting his assertion. Petitioner is really 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 over his claims because 8 U.S.C. § 1252, *et seq.*, precludes the review. Even if the Court had jurisdiction, Petitioner still fails 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 the execution of his final removal to The Gambia. 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").

Title 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).

Petitioner was lawfully arrested and detained in order to execute his valid final order of removal. (Parker Decl., at 2, ¶12.) Petitioner's challenge the "*decision*" and "*action*" to detain him is "in furtherance of the execution of his Removal Order . . . ." (*Id.*, at PageID 5, ¶¶22); *Grigorian v. Bondi*, Case No. 25-cv-22914, 2025 WL 1895479, *4 (S.D. Fla July 8, 2025) (distinguishing between challenge to ICE decision or action to detain in furtherance of execution of removal order versus challenge to "underlying

legal bases" of those decisions or actions). As a result, the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition.

The Sixth Circuit has held that a habeas petition is proper where it "challenged only the government's failure to give notice and the due process implications of the undocumented petitioner's arrest and detention, and because the petition did not address the merits of the underlying order of removal," *Kellici v. Gonzalez*, 472 F.3d 416,419-20 (6th Cir. 2006); (Petition, ECF 1, PageID 2, ¶5.). Specifically, the petitioner in the *Kellici* decision, did not receive notice of an "Order to Appear," and the habeas petition was related solely to the government's failure to provide him notice of the "Order to Appear," at his removal hearing. *Id.* at 417. In fact, *Kellici's* petition did not mention his final order of removal. *Id.*

However, the Petitioner here is not seeking to remedy any lack of notice for his removal hearing. *See Elgharib,* 600 F.3d at 605-06 (citing *Muka v. Baker*, 559 F.3d 480 (6th Cir. 2009)). Petitioner claims his detention pending removal is unlawful, (Petition, ECF 1, PageID 1-2, 5, ¶¶3, 5, 22), and that ICE's "decision to detain" him is not legal and arbitrary and capricious. (*Id.* at ¶22.) Indeed, Petitioner claims that ICE had no legitimate non-punitive objection when it decided to revoke his order of supervision is a Due Process violation. (*Id.* at PageID 6, ¶¶26). Further, Petitioner claims, without evidence, that his order of supervision was revoked without notice and a meaningful opportunity to respond, in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution. (*Id.*, at PageID 10, ¶43.)

An order of supervision may be revoked and a non-citizen may be detained beyond the removal period if, "(3) it is appropriate to enforce a removal order . . . ." 8

C.F.R. §241.4(l)(2)(iii). Petitioner "was taken into custody based on his final order of removal." (Parker Decl., at 2, ¶12.) Petitioner states that "ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond." (Petition, ECF 1, PageID 9, ¶40) (citing 8 C.F.R. § 2414(l)(1)). Petitioner also claims that revoking his supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the U.S. Constitution. (*Id.*, at PageID 10, ¶43.) However, *nowhere* in his Petition does Petitioner state he was not provided notice that his supervision was revoked nor state that he was not provided an informal interview. (*See* Petition, ECF 1.) (emphasis added). Petitioner's mere conclusion of law that revoking his "order of supervision without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution," is not sufficient. (*Id.*, at PageID 10, ¶43.) As such, any claim that Petitioner's detention violated ICE regulations is without merit.

Unlike the petitioner in *Kellici* decision, Petitioner Karaga is claiming that because he was not deported 90 days after his removal order, he was unlawfully arrested and detained by ICE weeks ago for execution of his removal order, although he has been subject to his final order of removal since it was issued in June 2022. (Petition, ECF 1, PageID 4, ¶12.) Petitioner is really contesting ICE's decision and actions to execute his valid, final order of removal. Indeed, Petitioner's complaints relate directly to his final order of removal. As a result, the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition.

B. Sections 1252(a)(5) and (b)(9) Bar Review of Petitioner's Claims.

This Court also lacks jurisdiction over Petitioner's 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, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, at *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 appealed his removal order pursuant to the administrative process, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c), and it was denied. (Petition, ECF 1, PageID 4, ¶13.) He could 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). However,

because Petitioner's requested relief arises from an "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 because he is lawfully detained. Therefore, this Court lacks jurisdiction to consider Petitioner's challenge to his detention and pending removal. *See, e.g, Touray v. Lynch,* No. 1:25-cv-683, 2025 WL 2778271, at *3 (S.D. Ohio Sept. 30, 2025). 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 a 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 on supervision after the initial 90-day removal period following the date the order became final, and because he was not a danger to the community and not a flight risk, ICE has unlawfully detained him pending removal. (Petition, ECF 1, PageID 6-7, ¶¶23-43.) Detaining Petitioner to enforce his removal does not violate the Fifth Amendment or the INA.

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 8, 11 ¶¶36-37, 47-48.) § 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 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), *Zadyvdas v. Davis*, 533 U.S. 678, 689-90 (2001), and the statutory language to support his Petition. (Petition, ECF 1, PageID 6-8, 11, ¶¶30-31, 36-38, 49.)

In keeping with the discretion afforded in 8 U.S.C. § 1231(a)(3), ICE placed Petitioner on supervision in 2007. (Petition, ECF 1, PageID 4, ¶14; Parker Decl., Ex. A, at 2, ¶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 . . . [i]t 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 Karaga's Removal Order and removing him to his home country, Gambia. (Parker Decl., Ex. A.) Indeed, ICE is authorized to end Petitioner's supervised release and detain him while processing his removal. 8 C.F.R. § 241.4(l)(2)(iii).

In similar recent cases, district courts have rejected this same argument. *See Touray v. Lynch,* No. 1:25-cv-683, 2025 WL 2778271, at *3 (S.D. Ohio Sept. 30, 2025) (no jurisdiction to review challenges to detention for removal and denying TRO because no likelihood of success under *Zadvydas*) ; *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,

at *5, *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 Karaga's Removal Order. *See* 533 U.S. 678 (2001). In fact, *Zadvydas* does not apply to Petitioner's case at all because he has been detained for less than ninety days and his removal is reasonably foreseeable. (Petition, ECF 1, PageID 4, ¶15; Parker Decl., Ex. A, at 2-3, ¶¶13-17.) Indeed, two-month periods of detention, like here, "fall well below the 6-month cutoff of presumptive reasonableness." *See Karki v. Jones*, No. 1:25-CV-281, 2025 WL 1638070, at *9 (S.D. Ohio June 9, 2025). Petitioner will be removed in the reasonably foreseeable future. (Parker Decl., Ex. A, at 2-3 ¶¶15-17.) 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 short detention here 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). Petitioner's removal is significantly likely to occur in the reasonably foreseeable future. (Parker Decl., Ex. A, at 2-3, ¶¶14-17.) Thus, *Zadvydas* does not apply, 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 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. Petitioner does not allege he was not provided notice that his supervision ended, nor does he allege he was not given an informal interview. (*See* Petition, ECF 1.) Petitioner merely concludes in Count I that revoking his "order of supervision without providing notice

and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution." (Petition, ECF, PageID 10, ¶43.) There is no evidence ICE failed to provide notice that Petitioner's supervision ended in order for him to be removed and not evidence that he was not given opportunity to be heard.

He does not contest that he entered the United States without a valid visa or entry document. (Parker Decl., Ex. A, at 1, ¶5.) Petitioner could have appealed his removal order BIA and the Court of Appeals. Respondent unaware of any motion to reopen or motion to stay with the BIA filed by Petitioner. He has received all the process he is due. All of Petitioner's alleged due process violations fail to state a claim upon which relief can be granted or this Court is without jurisdiction to consider them.

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 The Gambia. Therefore, this Court must deny relief and dismiss the action.

Respectfully submitted,

DOMINICK S. GERACE II
United States Attorney

s/William B. King II
WILLIAM B. KING II (094046)
Assistant United States Attorney
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
Office: (513) 684-3711
Fax: (513) 684-6972
E-mail: Bill.King@usdoj.gov

s/Adam C. Tieger
ADAM C. TIEGER (0093932)
Assistant United States Attorney
200 W. Second Street, Suite 600
Dayton, Ohio 45402
Office: (937) 531-6795
Fax: (937) 225-2564
E-mail: adam.tieger@usdoj.gov

Attorneys for Respondent