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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROLAND TUMASOV,

Petitioner,

v.

DOE 1, et al.,

Respondents.

Case No.: 25-cv-02704 AGS JLB

RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner is a citizen of Armenia who is subject to a final, executable order of removal, which means that he has no right to remain in the United States. Specifically, he was ordered removed from the United States on September 26, 2025, and was granted withholding of removal to Armenia that same day. As a result, although Petitioner may not be repatriated to Armenia, he may be resettled in a third country. Under 8 U.S.C. § 1231(a), ICE has authority to detain a noncitizen for 90 days to effectuate removal, and the Supreme Court has held that detention under these circumstances is presumptively reasonable for six months. Here, the six-month period for ICE to effectuate removal to a third country has not elapsed. Moreover, Petitioner has not sustained his burden to prove that there is no significant likelihood of his removal in the reasonably foreseeable future. The Court should therefore deny the petition and any request for injunctive relief.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Armenia. ECF No. 1, Ex. 1. On October 3, 2024, Petitioner entered the United States from Mexico via the San Ysidro Vehicle Primary Lanes with a counterfeit SENTRI card. Form I-831, attached as Exhibit A.[1] He was not in possession of any valid entry documents. *Id.* Customs and Border Protection (CBP) determined that Petitioner was inadmissible and placed him in expedited removal proceedings. *Id.* In the interim, Petitioner was detained. ECF No. 1, ¶ 3.

On September 26, 2025, Petitioner appeared for a hearing before an Immigration Judge (IJ). ECF No. 1, Ex. 6. The IJ denied Petitioner's application for asylum, found Petitioner removable under 8 U.S.C. § 1182(a)(6)(A)(i), ordered that he be removed from the United States, and granted his application for withholding of removal under INA § 241(b)(3). *Id.*[2]

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[1] Pursuant to Federal Rule of Evidence 201, Respondents request that the Court take judicial notice of the attached documents, which contain facts not reasonably in dispute.

[2] That statute provides, with certain exceptions, that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would

The IJ's order did not become final until October 27, 2025. Declaration of Leticia Rodriguez at ¶ 3. As a result, ICE is now actively working to locate a third country for resettlement and to effectuate Petitioner's removal from the United States. *Id.* at ¶ 4. Specifically, on October 17, 2025, ERO sent a request to ERO's Removal Management Division for a third country removal and that request is currently pending. *Id.*

ARGUMENT

A. Petitioner is Lawfully Detained

Authority to detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001).

Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. Although he has a temporary right not to be repatriated to Armenia, he has no right not to be resettled in a third country. ICE has longstanding authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like Petitioner, who have received protection against removal to the designated country (either withholding of removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and resettled in third countries.

Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall remove the noncitizen to any of the following:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

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be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

(iv) The country in which the alien was born.
(v) The country that had sovereignty over the alien's birthplace when the alien was born.
(vi) The country in which the alien's birthplace is located when the alien is ordered removed.
(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country in subparagraph (D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi).

An alien ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a six-month period under these circumstances constitutes a "presumptively reasonable period of detention." *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005) ("[T]he presumptive period during which the detention of an alien is reasonably necessary to effectuate his removal is six months…"); *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003).

Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377. "[O]nce removal is no longer foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. Ultimately, "an alien can be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future [("SLRRFF")]." *Id.*

The Ninth Circuit has emphasized that "*Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is 'good reason to believe that there

is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). The alien must make such a showing to shift any burden to the government. *Zadvydas*, 533 U.S. at 701.

Here, Petitioner's request is premature as the six-month presumptively reasonable removal period will not end until at least March 26, 2025. *See Ali v. Barlow*, 446 F. Supp. 2d 604, 609-610 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same); *but see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Moreover, even if the presumptively reasonable removal period had elapsed, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future. ICE is in the process of attempting to obtain travel documents from a third country pursuant to 8 U.S.C. § 1231(b)(2)(E), so it is premature for Petitioner to seek administrative or judicial review of that process. If ICE obtains travel documents for resettlement in a third country, Petitioner will have an opportunity to seek to reopen his removal proceedings. *See* 8 U.S.C. § 1229a(c)(7) (motions to reopen); 8 C.F.R. § 1003.23(b) ("Reopening or reconsideration before the immigration court"). It is also possible to request an emergency stay of removal. *See generally* 8 C.F.R. §§ 1003.2(f), 1003.23(b)(v). Judicial review of that process will be exclusive to the Ninth Circuit. *See* 8 U.S.C. § 1252(b)(6), (9). At the current time, however, Petitioner's detention is not unconstitutionally indefinite because ICE is actively working to effectuate Petitioner's removal to a third country. *See* Declaration of Leticia Rodriguez at ¶¶ 1-4.

Finally, to the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("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.") (emphasis added)*; see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders" – which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

CONCLUSION

The Court should deny and dismiss Petitioner's habeas petition. For the same reasons, the Court should deny Petitioner's request for injunctive relief. *See Munaf v. Geren*, 553 U.S. 674, 692 (2008) (holding that because "the detainees' claims do not state grounds upon which habeas relief may be granted," their "habeas petitions should have been promptly dismissed" and "no injunction should have been entered.").

DATED: October 30, 2025

Respectfully submitted,

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