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November 18, 2025

By ECF
Hon. Katharine S. Hayden, U.S.D.J.
U.S. District Court for the District of New Jersey
Frank R. Lautenberg U.S. Post Office and Courthouse
2 Federal Square
Newark, NJ 07102

Re: *Tsitsouachvili v. Warden of Delaney Hall*, No. 25-16875
Respondents' Answer to Petition and Request to Dissolve Temporary Restraints

Dear Judge Hayden:

This Office represents the Respondents in the above-referenced immigration habeas matter brought by Petitioner Devi Tsitouachvili. For the reasons that follow, there are no grounds for the Court to continue the current restraints on the Department of Homeland Security ("DHS") or to order relief on the Petition. ECF No. 1 ("Pet."). The Respondents respectfully request that the Court dismiss the Petition.

I. Background

Petitioner, a citizen of the nation of Georgia,[1] entered the United States in December 1994 on a nonimmigrant student visa. *See* Ex. A, Oct. 8, 2019 Decision and Order of the Immigration Judge. In 1997, he received asylum. *Id*.

Subsequently, in November 2002, Petitioner was convicted in the United States District Court for the Southern District of New York of conspiracy to distribute

[1] Petitioner asserts that he is a "noncitizen" of Georgia who is "presently considered 'Stateless.'" However, as discussed further below, DHS made arrangements to remove him to Georgia on or around November 16, 2025—an effort Petitioner opposed by seeking a temporary restraining order. Further, it is noteworthy that Petitioner sought to "revoke" his Georgian citizenship immediately after receiving an order of removal in September 2005. *See* Petition, Ex. D.

the controlled substance MDMA in violation of 21 U.S.C. § 846 and sentenced to 46 months of imprisonment. Ex. A; Pet. at Ex. B.

In July 2005, the Department of Homeland Security ("DHS") filed a motion to reopen Petitioner's removal proceeding and revoke Petitioner's asylee status given his conviction for an aggravated felony. Ex. A. On September 28, 2005, the Immigration Judge found that Petitioner's conviction constituted an aggravated felony, revoked his asylee status, and ordered Petitioner removed to Georgia. *Id.* Petitioner "waived his right to an appeal, but never departed the United States." *Id.* That waiver rendered his removal order final.

In August 2019, Petitioner then filed a motion to reopen his immigration case and seek asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"), and other forms of relief from removal. *Id.* An Immigration Judge denied that motion by written opinion. *Id.* Petitioner moved for reconsideration, which was denied by written opinion. Ex. B, Dec. 23, 2019 Decision and Order. Petitioner appealed to the Board of Immigration Appeals ("BIA") which affirmed the Immigration Judge's decision by written opinion. Ex. C, Sept. 1, 2020 Decision of BIA.

On October 20, 2025, DHS arrested Petitioner and detained him in preparation for his removal to Georgia. Pet. ¶ 10. DHS made arrangement to remove Petitioner to Georgia on or around November 16, 2025. ECF No. 5. Following the Court's recent Order, discussed below, DHS canceled those arrangements.

II. Procedural History

Petitioner initiated this action on October 23, 2025, within days of his detention. *See generally,* Pet. While acknowledging that he is detained under 8 U.S.C. § 1231 because of his final order of removal, he asserted the following claims for relief: (1) "ICE's continued detention of someone like Petitioner under such circumstances is unlawful" under 5 U.S.C. § 706(2)(2)(A); and (2) denial of due process under the Fifth Amendment. *See* Pet. Counts 1-3. Petitioner seeks release from detention or a bond hearing.

Petitioner also moved for immediate relief on his Petition. ECF No. 2. By written opinion and order, the Court denied such relief and ordered the Respondents to answer. *See Tsitsouachvili v. Soto*, No. 25-16875 (KSH), 2025 WL 3012909, at *2 (D.N.J. Oct. 28, 2025).

Petitioner then wrote the Court again on Friday, November 14, 2025 to request a temporary restraining order barring his removal because DHS notified him that he would be removed on Sunday, November 16, 2025. ECF No. 5. The Court granted a temporarily restraining order barring his removal. ECF No. 7. As a result of the Order, DHS terminated the arrangements to remove Petitioner to Georgia.

III. Argument

For the reasons that follow, the Court should deny Petitioner relief on his Petition, dissolve the temporary restraints, and dismiss this matter.

A. Detention of Petitioner Is Mandatory Because He Is Subject to a Final Order of Removal

Petitioner's September 28, 2005 order of removal is final. His 2019 effort to reopen the final order of removal was unsuccessful. As a result, Petitioner is subject to detention and removal under 8 U.S.C. § 1231(a). Further, where an alien is subject to a final order of removal (as Petitioner is), there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1); *see Tsitsouachvili*, 2025 WL 3012909, at *1. Detention during the removal period is mandatory. *See* 8 U.S.C. § 1231(a)(2). That mandatory detention period for Petitioner began on October 20, 2025, when DHS arrested him and detained him pursuant to the 2005 final order of removal.

DHS expects to remove Petitioner during the removal period, as directed by Congress. Indeed, contrary to Petitioner's assertions in his Petition that DHS is unable to remove him, DHS arranged to remove him to Georgia on or about November 16, 2025—an effort Petitioner opposed.

DHS expects to remove Petitioner shortly after the Court's TRO is lifted or dissolved. However, there are at least three potential outcomes in the event DHS does not remove an alien during the 90-day removal period. First, DHS may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, DHS may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And finally, DHS may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how long detention during the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that DHS may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the Supreme Court further clarified that a six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

Here, Petitioner is approximately one month into the removal period during which DHS is required to detain him. There is no basis to argue that his detention is wrongful. Further, to the extent that he is arguing that DHS has subjected him to a "prolonged detention," such arguments are meritless at this point. Under *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained "for **less than six months** must be dismissed as premature." *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021) (emphasis added); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) ("To state a claim under *Zadvydas*, the presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal."); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008) (collecting cases). Here, Petitioner is still within the initial mandatory 90-day removal, and detention, period under 8 U.S.C. 1231(a)(2). It is not unconstitutionally prolonged.

While Petitioner originally asserted that DHS had no way to remove him, he cannot stand on that position given last week's events. DHS was prepared to remove him to Georgia, and Petitioner affirmatively sought to block such removal. He must now advance new arguments that DHS cannot or will not remove him in a timely manner. *See Barneboy v. Att'y Gen.*, 150 F. App'x 258, 261 n.2 (3d Cir. 2005) (recognizing "burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." (quotation omitted)). And even if Petitioner did propound any such argument, the claim would fail. Here, DHS arrested him on October 20, 2025, immediately detained him, and made arrangements to remove him less than 30 days later.

Accordingly, Respondents respectfully request that the Court deny Petitioner habeas relief.

B. Petitioner's Due Process Claims Fail to Provide Grounds for Habeas Relief

Petitioner further argues that his detention and removal violate due process under the circumstances alleged. This claim to relief is vague and conclusory, and in all events, it is also incorrect.

Petitioner received due process during his 2005 removal proceedings, and he waived further review after an Immigration Judge revoked his asylee status and issued a final order of removal. He failed to voluntarily depart and then received further process when he applied to reopen his final order of removal in 2019. To the extent that Petitioner seeks here to challenge those rulings or otherwise attack

decisions regarding his status in the United States,[2] then: (1) there is no jurisdiction for such a challenge; and (2) Petitioner can still litigate the immigration matters while removal is pending and even after removal. *See, e.g.*, *Revan v. Warden, Essex Cnty. Corr. Facility*, 822 F. App'x 156, 157 (3d Cir. 2020) (citing 8 U.S.C. § 1252(a)(5) and finding no jurisdiction for an effort to remain in the United States to further challenge a final order of removal); *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020) (explaining that district courts lack jurisdiction "to review most claims that even relate to removal"); *M'Bagoyi v. Barr*, 423 F. Supp. 3d 99, 106 (M.D. Pa. 2019) ("[T]o the extent that the petitioner seeks a stay of his removal until he exhausts his remedies with respect to his motion to reopen his immigration proceedings, that would be a direct challenge to his removal order and the court does not have jurisdiction over that aspect of the petitioner's filing under § 1252."); *Ponce v. Garland*, No. 22-1751, 2022 WL 14318031, at *1 (C.D. Cal. Oct. 24, 2022) (denying petitioner's request for "a stay of removal until the Bureau of Immigration Appeals rules on Petitioner's pending motion to reopen"); *Beltran Prado v. Nielsen*, 379 F. Supp. 3d 1161, 1169-70 (W.D. Wash. 2019) ("If he is removed to Mexico while his motion to reopen is pending, he may continue to litigate his case from abroad . . . Allowing petitioner to remain in the United States while his motion to reopen is pending is unlikely to provide additional value, in terms of due process protections, and it likely would provide at least some administrative burdens on ICE"). The same principles apply here, and the Court should deny habeas relief on the suggested due process grounds.

IV. Because Petitioner Cannot Clear the High Bar to Obtain a TRO, the Court Should Dissolve Its Restraints

In advance of Respondents' answer deadline, the Court imposed temporary restraints on Respondents' ability to remove Petitioner. Respondents respectfully request that the Court dissolve those restraints now because Petitioner cannot make an independent showing warranting a TRO. Like a preliminary injunction, a TRO "is an extraordinary remedy that should be granted only if: (1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." *NutraSweet Co. v. Vit-Mar Enters., Inc.*, 176 F.3d 151, 153 (3d Cir. 1999) (internal quotation marks omitted). "A plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate." *Id.*

Here, a TRO or any other kind of injunctive relief is inappropriate because Petitioner cannot succeed on the merits of his Petition. As discussed above, Petitioner

[2] Petitioner does not appear to attack his removability, but rather to argue that under the totality of the circumstances, it is somehow unfair to remove him from the United States notwithstanding his final order of removal.

has been detained for under one month, during the removal period wherein detention is mandatory under 8 U.S.C. § 1231(a)(1)(A). He has been subject to a final order of removal for many years. DHS is actively moving forward on his removal. There is no jurisdiction for the Court to review matters related to any attempt to attack the outcome of his immigration case or other related administrative matters, and Petitioner is able to litigate such matters from detention or from Georgia if DHS removes him. Denial of habeas relief will not cause Petitioner irreparable harm because DHS is detaining him to effectuate his 2005 final removal order, which he unsuccessfully challenged in 2019. Similarly, an injunction is not in the public interest here because DHS is executing the immigration laws of the United States and taking appropriate steps to detain and remove an individual who has been subject to a final order of removal to Georgia for over 20 years, which order arose from his conviction of an aggravated felony.

Accordingly, Respondents respectfully request that the Court dissolve the existing restraints and dismiss the Petition. We thank the Court for its attention to this matter.

Respectfully submitted,

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Special Attorney

By: /s/ *John T. Stinson*
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Attachments (Exhibits A-C)
cc: Counsel of Record (by ECF)