UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Paul John Bojerski,	X	
Petitioner,	X	
	X	
v.	X	Case No.:
	X	6:25-cv-2052-JSS-RMN
Kristi Noem, Secretary, U.S. Department of	X	
Homeland Security; *et al.*	X	
Respondents.	X	
______________________________________/		

RESPONSE TO RESPONDENTS' MOTION TO DISMISS

INTRODUCTION

The government has filed a motion to dismiss the Complaint, arguing a lack of subject matter jurisdiction and a failure to state a claim upon which relief can be granted. As is discussed in more detail below, subject matter jurisdiction over Petitioner's claim is neither precluded by statute nor by case law. Upon establishing subject matter jurisdiction, Petitioner submits that this Court can grant relief in accordance with the claims set forth in the Petition. As such, Petitioner respectfully requests that this Court deny the motion to dismiss.

A. Factual and Procedural Background

Petitioner's nationality is at the heart of the Petition. Petitioner was born in a displaced-persons camp located in Germany following the end of hostilities in World War II. Each of Petitioner's parents were Polish nationals at the time of his birth.

Petitioner and his immediate family members were each admitted to the United States for permanent residence on or about January 29, 1952. On or about June 21, 1967, the legacy Immigration and Naturalization Service issued a Form I-221, Order to Show Cause ("OSC"), against Petitioner alleging that he was subject to deportation because of his criminal history. A Special Inquiry Officer ("SIO")[1] ordered Petitioner to be deported from the United States to Poland via written order dated August 13, 1968 with an alternate order of deportation to West Germany.

Petitioner appealed this decision to the Board of Immigration Appeals ("Board") and the Board affirmed the SIO's decision via written order dated December 27, 1968. Petitioner concedes that the Board's December 27, 1968 order represents the final "order of deportation" entered against him. *See* 8 U.S.C. §1101(a)(47).

In or about 1969, the legacy INS issued a Form I-220B, Order of Supervision ("Form I-220B" or "OSUP"), to Petitioner.[2]

In or about 1988, Petitioner married Gayle Burke ("Gayle") in Florida. Gayle is a natural born U.S. citizen ("USC"). Gayle and Petitioner traveled to Niagara Falls, Ontario, Canada for their honeymoon. Neither Gayle nor Petitioner

[1] Prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996), the term "immigration judge" had never been defined by the Immigration and Nationality Act, 8 U.S.C. §1101 *et seq.*. At the time the deportation proceedings had been initiated against Petitioner, "immigration judges" were known as "Special Inquiry Officers."

[2] It appears that Petitioner was confined in Ohio during the time the deportation proceedings had been initiated against him. Based upon information and belief, Petitioner posits that this first OSUP was issued to him by INS following his release from his incarceration in an Ohio prison.

encountered any issue making an application for admission to Canada, entering by vehicle at or near Buffalo, New York. Upon their return to the United States at or near Detroit, Michigan, the couple presented themselves for inspection before an Immigration Inspector and both were permitted to enter the United States.

In or about 1992, Gayle and Petitioner took a vacation to Southern California. While there, the couple took a day trip from Los Angeles to San Ysidro. Gayle and Petitioner entered Mexico on foot with plans to spend the day in Tijuana, Baja, Mexico. Neither individual encountered any issue entering Mexico. Upon their return at or near San Ysidro, Gayle and Petitioner presented themselves for inspection and both were permitted to enter the United States.

In or about 2008, representatives of U.S. Immigration and Customs Enforcement's ("ICE") Orlando Office of Enforcement and Removal Operations ("ERO") contacted Petitioner regarding his immigration status in the United States.[3] This contact led to Petitioner being issued a new OSUP. The most recently issued OSUP was provided to Petitioner on or about June 15, 2010 and he regularly reported to ERO in accordance with this OSUP until July 24, 2025.

Promising a program of "mass deportations," Donald Trump was inaugurated as the 47th President of the United States on January 20, 2025. During Petitioner's

[3] On or about June 4, 2008 a Deportation Officer employed by ERO created a Form I-213, Record of Deportable/Inadmissible Alien ("Form I-213"), relating to Petitioner. The narrative within this Form I-213 indicates that "SUBJECT claims he departed the USA on October 1988 to Toronto Canada on his honeymoon and again 07/1991 to Mexico to visit family members." As is explained in Gayle's Affidavit, she mistakenly believed that the day trip to Mexico occurred in July 1992. Photographs of this trip are available and are date stamped "AUG 1992."

appearance before ERO on July 24, 2025, he was informed that he would be required to appear again on or about October 30, 2025. Moreover, a Form G-56, Call-In Letter, issued to Petitioner during this appearance informs him that "you are to present travel arrangements and travel docxuments (sic.) to depart the United States due to your removal order."

On or about October 24, 2025, Petitioner filed a Petition with the U.S. District Court seeking a writ of habeas corpus. Petitioner was thereafter arrested by ICE when he reported on October 30, 2025. On or about December 29, 2025, Defendants filed a Response in Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss ("Motion to Dismiss"). This response follows.

DISCUSSION

I.

A. Federal Rule of Civil Procedure 12(b)(1)

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (internal citations omitted). Petitioner concedes that he bears the burden of establishing this Court's jurisdiction to hear a claim. Id.

B. Federal Rule of Civil Procedure 12(b)(6)

A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief."[4] To survive a Rule 12(b)(6) motion to dismiss, "a

[4] Fed. R. Civ. Pro. 8(a)(2).

complaint must [ ] contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Am. Dental Ass'n v. Cigna Corp., 605 F.3d 1283, 1289 (11th Cir. 2010); *see also* Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Brooks v. Warden, 800 F.3d 1295, 1300 (11th Cir. 2015) (quotation marks omitted).

C. Subject matter jurisdiction exists to determine whether Petitioner is subject to an "order of deportation"

That 8 U.S.C. §1101(g) provides as follows:

> "[f]or the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed."

Moreover, 8 C.F.R. §241.7 provides, in pertinent part, that

> "[a]ny alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to be so deported or removed."

Petitioner's claim herein is that he self-deported when he departed the United States and entered Canada in 1988 while subject to the aforementioned order of

deportation. Nevertheless, the Motion to Dismiss almost completely ignores this aspect of Petitioner's claims herein.[5]

In Madu v. U.S. Att'y Gen., 470 F.3d 1362 (11th Cir. 2006), the alien challenged the existence of an order of deportation through a habeas petition filed in accordance with 28 U.S.C. §2241. The factual dispute therein was whether he had complied with an Immigration Judge's order requiring his voluntary departure from the United States. This same order included an alternate order of removal if the alien did not depart the United States as required. Whether or not an order of deportation existed depended on whether the alien had complied with the order allowing his voluntary departure. The district court concluded that it lacked jurisdiction to consider the habeas petition in light of the REAL ID Act of 2005[6] and transferred the matter to the Circuit Court.

The panel assigned to Madu concluded that the District Court erred when it concluded that it lacked jurisdiction to consider the habeas petition. The panel noted its joinder with "the Third Circuit in holding that a petitioner who contests the very existence of an order of removal does not seek 'review of an order of removal' within the meaning of the REAL ID Act." Id. at 1366, *citing* Kumarasamy v. U.S. Att'y Gen., 453 F.3d 169 (3rd Cir. 2006).

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[5] The Motion to Dismiss ignores any discussion of §1101(g) or 8 C.F.R. §241.7. Rather, Respondents suggest that Petitioner is subject to reinstatement of the order of deportation in accordance with 8 U.S.C. §1231(a)(5). Notwithstanding, the Department has provided no evidence of its issuance of a Form I-871, Notice of Intent/Decision to Reinstate Prior Order or its compliance with the requirements set forth at 8 C.F.R. 241.8.

[6] Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005).

The panel also considered two other statutory provisions which the government argued would preclude judicial review of the alien's habeas petition.

The first is 8 U.S.C. §1252(g), which provides that

> "[e]xcept 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."

The panel disposed of this concern by concluding that

> "[w]hile this provision bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions."

The remaining statutory provision is 8 U.S.C. §1252(b)(9), which provides, in pertinent part, that:

> "[j]udicial 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."

The panel disposed of this concern by concluding that

> "[b]ecause section 1252(b)(9) applies only '[w]ith respect to review of an order of removal,' and this case does not involve review of an order of removal, we find that section 1252(b)(9) does not apply to this case."

D. Defendants' invocation of 8 U.S.C. §1252(g) and 8 U.S.C. §1252(b)(9) is misplaced.

Respondents cite to Camarena v. ICE, 988 F.3d 1268 (11th Cir. 2021)[7] for the proposition that "[c]ourts have consistently held that [§]1252(g) eliminates subject-matter jurisdiction over challenges-including constitutional claims-to an arrest or detention made for the purposes of executing a final removal order." Motion to Dismiss at 5. This case is factually distinguishable inasmuch as Camarena involved "two immigrants who admit that they are subject to valid removal orders." Id. at 1270.

Moreover, the panel in Camarena discussed why Madu was distinguishable from the claims raised therein. In response, the panel wrote that

> "...their reliance on Madu is misplaced. The question presented by Madu's habeas petition was not whether the government had the authority to execute a removal order, but whether there was any removal order at all. In other words, Madu's claim was that the government could not detain or remove him because it did not even have a removal order to execute. It is hard to see how the government could 'execute' a removal order that does not exist, which means it is no surprise that §1252(g) did not block that challenge." (internal citations omitted). Id. at 1273.[8]

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[7] The factual scenario presented in these challenges involve aliens who were subject to a final order of deportation. These challenges arose while ICE was in the process of effectuating said orders of deportation while the aliens therein had pending applications for waivers of inadmissibility that would be required to complete the consular processing of approved immigrant visa petitions filed on behalf of each individual. Not only does Petitioner herein challenge the existence of an order of deportation against him, he has at no point sought the type of immigration benefits sought by the aliens in Camarena.

[8] Respondents also cite to Johnson v. Acting U.S. Atty. Gen., 874 F. App'x 801 (11th Cir. 2021), and Gupta v. McGahey, 709 F.3d 1062 (11th Cir. 2013), in support of its claim that §1252(b)(9) precludes the existence of subject matter jurisdiction to address the Petition. Motion to Dismiss at 5. Both of these cases involved prosecution of Bivens actions against the federal government. In Johnson, the panel wrote that "[i]n Gupta, a removable alien brought a Bivens action arguing that federal agents illegally created an arrest warrant, illegally arrested him, and illegally detained him...," noting that the panel in Gupta "squarely hled that §1252(g) barred the court from reaching the merits of those claims." Johnson v. Acting U.S. Att'y Gen., *supra*, at 803. The panel also stated that "like the appellant in Gupta, Johnson is attempting to challenge his underlying immigration orders and to obtain declaratory relief from the district court that his ICE detainers, notice to appear, detention order, and removal order are unconstitutional...," noting that "this kind of challenge

Reliance on Canal A Media Holding, LLC v. USCIS, 964 F.3d 1250 (11th Cir. 2020), is equally inapposite. Canal A involved a challenge the denial of a nonimmigrant visa petition filed by an employer and on behalf of an employee who had an open case pending before an Immigration Judge. The Court dismissed the challenge, concluding that it lacked subject matter jurisdiction because this challenge was "inextricably linked to any ultimate removal order against [the employee]." Id. at 1257.

The panel disagreed, concluding instead that "[t]he District Court's expansive interpretation of the zipper clause does not square with that provision's 'narrow' scope." Id. The panel further noted that

> "...a claim only 'aris[es] from' a removal proceeding when the parties are 'challenging ... removal proceedings.' Regents, 140 S. Ct. at 1907[9] ; *see* Madu, 470 F.3d at 1367. This rule makes sense. The zipper clause promotes judicial economy by consolidating 'challenges to any action related to removal proceedings ... with the review of the final order of removal.' 14A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure §3664 (4th ed. Apr. 2020 update). Here, because the Plaintiffs have not brought any challenge to [the employee's] removal proceedings, the zipper clause's channeling function has no role to play."

'unambiguous[ly]' is included within the exclusionary language of §1252(g). (internal citation omitted). Id.

Moreover, the additional cases cited by Respondents are all factually distinguishable. Hamama v. Adduci, 912 F.3d 869 (6th Cir. 2018), involves aliens subject to an unexecuted order of deportation. Tazu v. U.S. Att'y Gen., 975 F.3d 275 (3rd Cir. 2020), actually considers claims which are factually indistinguishable from those raised in Camarena, supra, and raised by an alien against whom an unexecuted order of deportation continued to exist. Rauda v. Jennings, 55 F.4th 773 (9th Cir. 2022), discusses an alien against whom an unexecuted order of deportation was entered who was attempting to use a habeas petition to preclude his removal while a motion to reopen remained pending adjudication. E.F.L. v. Prim, 986 F.3d 959 (7th Cir. 2021), discusses a Mexican national who remained subject to an unexecuted order of deportation who sought a habeas petition to prevent her removal pending adjudication of an immigrant benefit application pending before U.S. Citizenship and Immigration Services ("USCIS").

[9] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020).

As it did in reference to whether §1252(g) precludes subject matter jurisdiction, the Circuit Court relied on Madu as a means of explaining why provisions like §1252(b)(9) do not apply to habeas petitions like the Petition herein. In Madu, the panel wrote that "the question … is whether there is a removal order at all, which … is a different question than whether an extant removal order is lawful. Madu, *supra*, at 1367. This is indistinguishable from the legal issues raised herein. *See also* Reno v. Amer.-Arab Anti-Discrim. Comm., 525 U.S. 471 (1999).[10]

II. Provisions governing detention of aliens following entry of an administratively final "order of deportation"

The Immigration and Nationality Act ("INA" or "Act") provides as follows:

> (a) Detention, release, and removal of aliens ordered removed
>
> (1) Removal period
>
> (A) In general
>
> 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").
>
> (B) Beginning of period
>
> The removal period begins on the latest of the following:

[10] Writing for the majority, Justice Scalia concluded that this provision should be interpreted narrowly, adding that "[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." Id. at 471. Here, Petitioner does not seek judicial review of any of the three "discreet actions" mentioned in §1252(g). Rather, Petitioner challenges the very existence of an unexecuted order of deportation. To the extent such order of deportation exists, Petitioner likewise challenges the lawfulness of Respondents' decision to detain him indefinitely pending execution of the outstanding order of deportation, an aspect of his removal proceedings that is in no way shielded from judicial review by operation of this provision of the INA.

> (i) The date the order of removal becomes administratively final.
>
> (ii) If 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.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

The INA further describes whether an alien can be detained following expiration of the 90-day "removal period" set forth above. Specifically, 8 U.S.C. §1231(a)(3) provides that

> "[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien-
>
> (A) to appear before an immigration officer periodically for identification;
>
> (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
>
> (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
>
> (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien."

Finally, §1231(b)(6) provides that

> "[a]n 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)."

In addition, ICE has implemented a number of regulations providing additional guidance on how the statutory provisions cited above are to be implemented. Two regulations are if significant import here, 8 C.F.R. §241.4 and 8 C.F.R. §241.13.

Section 241.4 sets forth a process applicable to any alien who is detained for the purpose of executing an "order of deportation." This provision describes a system through which ICE is required to (1) notify an alien subject to detention in accordance with §1231(a)(1) of its custody determination; (2) consider evidence provided by the alien in support of a request that the alien be released; and (3) provide periodic review of these determinations through efforts made both in the location where the alien is detained and through assistance provided by U.S. Immigration and Customs Enforcement's Headquarters Post-Order Detention Unit (HQPDU). *See* 8 C.F.R. §241.4(c).

Section 241.13 describes "determination[s] of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future." Specifically,

> "[t]his section establishes special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period, where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future."

The regulations further tie §241.13 to the procedures described in §241.4 by stating that

> "Section 241.4 shall continue to govern the detention of aliens under a final order of removal, including aliens who have requested a review of the

> likelihood of their removal under this section, unless the Service makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future. The Service may release an alien under an order of supervision under §241.4 if it determines that the alien would not pose a danger to the public or a risk of flight, without regard to the likelihood of the alien's removal in the reasonably foreseeable future."

III. Petitioner can lawfully challenge his indefinite detention through the instant petition seeking a writ of habeas corpus

i. Respondents' suggestion that Petitioner's claim is premature lacks merit

Petitioner begins this portion of the discussion with an observation that the Motion to Dismiss appears intent on obfuscating the actual issue at the heart of Petitioner's claim. A casual review of the Motion to Dismiss makes evident an attempt to convince this tribunal that the Department is simply doing what the INA and its implementing regulations authorize and that Petitioner must remain detained while the agency works on executing the purportedly outstanding order of deportation.

The order of deportation against Petitioner by the Board became administratively final upon its issuance on December 27, 1968. *See* 8 U.S.C. §1101(a)(47)(B). Although 8 U.S.C. §1231(a)(1)(A) mandates that "the Attorney General shall remove the alien from the United States within a period of 90 days," the Department has provided no evidence of any efforts it made, or is making, to execute any purportedly outstanding order of deportation consistent with its statutory obligations. This fact distinguishes Petitioner's claim from those discussed in cases interpreting the extent to which an alien can remain detained following expiration of

the §1231)(a)(1)(A)'s "removal period." Respondents, however, posit that "Petitioner's Petition is premature." Motion to Dismiss at 7.

In Zavydas v. Davis, 533 U.S. 678 (2001), the Supreme Court considered habeas claims filed by two aliens against whom a final order of deportation had been entered. One such individual was a permanent resident, but his country of nationality remained questionable. This individual's parents were both Lithuanian citizens, but the alien had been born in a displaced persons camp in Germany following World War II. Neither Lithuania nor Germany would issue a travel document to permit ICE to effectuate the outstanding order of deportation.[11] This individual was detained in the Department's custody upon entry of the order of deportation and continued to remain detained beyond the applicable "removal period." Id. at 684-685.

The other individual was born in Cambodia and had likewise attained lawful permanent resident status. Despite the non-existence of any repatriation treaty between Cambodia and the United States, this individual's continued detention appears to have been based on the Department's assessment that the alien was unlikely to maintain any conditions placed on his release. This individual was also detained in the Department's custody upon entry of an order of deportation and continued to remain detained beyond the applicable "removal period." Id. at 686.

Zadvydas considered whether any limitation restricts ongoing detention following expiration of the applicable "removal period." While the Government

[11] The Supreme Court's opinion also includes details regarding a failed attempt to secure a travel document permitting this individual to be removed to his spouse's country of nationality.

argued that the statutory language included no inherent restriction as to how long an alien could remain detained following expiration of the "removal period," Justice Breyer concluded that

> "[i]n our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." Id. at 689.

Moreover, Justice Breyer wrote that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem,"[12] noting that "[t]he civil confinement here at issue is not limited, but potentially permanent."[13] Id.

Ultimately, the operative holding in Zadvydas rests upon the proposition that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." Id. at 699. More importantly,

> "[w]hether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. The basic federal habeas corpus statute grants the federal courts authority to answer that question." Id.

Justice Breyer further concluded that

> "[i]n answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. Id. at 699-700.

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[12] Id. at 689.
[13] Id. at 691.

The Government, however, reads Zadvydas to support its argument that "Petitioner's Petition is premature." Motion to Dismiss at 6-9. Assuming *arguendo* that an outstanding order of deportation exists, Petitioner's claim herein has *nothing* to do with the length of his detention. Rather, what Petitioner is challenging is his claim that his detention is indefinite as there appears to exist no set of facts or circumstances upon which ICE can convince this tribunal that his removal is reasonably foreseeable. Nevertheless, the Government claims that Petitioner must sit in a detention facility while it engages in its efforts to effectuate the purportedly outstanding order of deportation. Yet the agency offers no detailed description of its efforts to effectuate an order of deportation initially entered more than fifty (50) years ago.

Again, Justice Breyer addressed this very same concerns in Zadvydas.

> "[w]e recognize, as the Government points out, that review must take appropriate account of the greater immigration related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive INS efforts to enforce this complex statute, and the Nation's need to 'speak with one voice' in immigration matters. But we believe that courts can take appropriate account of such matters without abdicating their legal responsibility to review the lawfulness of an alien's continued detention." (internal citation omitted). Id. at 700.

ii. Petitioner's case is distinguishable from the aliens described in Zadvydas v. Davis

Despite the factual scenario presented herein being distinguishable from the aliens discussed in Zadvydas, Respondents maintain that the Court lacks any authority to intercede. While the facts herein are similar to the first individual described in Zadvydas in that Petitioner's nationality remains questionable, the purported order of

deportation herein was entered decades ago. Unlike the second individual discussed in Zadvydas, there is nothing to indicate that any lack of a repatriation treaty rests at the heart of any inability to effectuate the purported order of deportation. Unlike the efforts taken to effectuate the orders of deportation entered against the aliens described in Zadvydas, the current record reflects no efforts having ever been taken to effectuate Petitioner's order of deportation at any point either before or after the initiation of these proceedings.

The long and short of Petitioner's claim is that ICE must conduct its efforts to effectuate an order of deportation so as to avoid the violation of an alien's Constitutional rights inherent in the Fifth Amendment's guarantees of both substantive and procedural Due Process. Petitioner submits that this tribunal cannot ignore the fact that ICE has provided it with no means of understanding what, if any, efforts have been taken since the end of 1968 to execute any order of deportation. At best, ICE has made clear its intent to *begin* making such efforts without providing any record of any prior, ongoing or consistent efforts like those described in Zadvydas. The Motion to Dismiss provides the Court with basis to even suggest that there exists any reasonably foreseeable likelihood that any purportedly outstanding order of deportation can be effectuated.

Petitioner suggests that the Motion to Dismiss makes clear the need for judicial intervention into the agency's claim that it is working towards effectuating any purportedly outstanding order of deportation. Unfortunately, ICE's efforts thus far have been to arrest and detain first and then figure out a plan later. Instead of

maintaining some concern for avoidance of what reasonably appears to be Petitioner's indefinite detention, Respondents ask the Court to avoid a clear indication of potential Constitutional violations as described in the Petition. As Justice Breyer made clear in Zadvydas, District Courts maintain the requisite authority to review the Department's actions and the dismissal of these proceedings would only encourage the Administration to prolong what can only be described as an ongoing and continuing violation of Petitioner's Constitutional rights.

iii. Judicial intervention at this stage is not precluded solely because Petitioner has not remained detained in excess of the presumptively reasonable period described in Zadvydas v. Davis

The Motion to Dismiss posits that "before [the Zadvydas] six-month period expires, any habeas challenge to the detention itself is premature." Motion to Dismiss at 7. Interestingly, the Government cites Akinwale v. Ashcroft, 287 F.3d 1050 (11th Cir. 2002), in support of its argument. Contrary to Respondents' argument, Akinwale is both consistent with the holding in Zadvydas and is factually distinguishable from the scenario presented in these proceedings.

The alien in Akinwale is a Nigerian national who was a permanent resident against whom a final order of deportation was entered while the alien was incarcerated in State custody. Following the alien's release from incarceration, the Department assumed custody. The alien thereafter filed a habeas petition approximately four (4) months thereafter and prior to the expiration of the presumptively reasonable period of post-order custody described in Zadvydas. Id. at 1051.

The question presented herein involves a claim of indefinite detention based on a lack of any evidence even suggesting the existence of a significant likelihood of removal in the reasonably foreseeable future. At each step along the way, however, the Department seeks to turn the discussion back to the presumptively reasonable period described in Zadvydas because doing so avoids considering whether any likelihood of removal in the foreseeable future *currently* exists. While the Government may argue that detention of an alien in anticipation of even a remote possibility that the outstanding order of deportation can be effectuated is sufficient to avoid judicial intervention, this is inconsistent with the jurisprudence of Zadvydas and its progeny.

Nevertheless, the Department argues that it is working on Petitioner's case and that he must remain detained. To the extent that any reasonable likelihood of Petitioner's removal in the foreseeable future exists, denying the Motion to Dismiss and requiring Respondents to respond to the Petition may further elucidate whether ICE's efforts are Constitutionally sound. Not only is Petitioner's claim one that warrants judicial intervention, Petitioner submits that the only way to ensure the protection of his Constitutional right to be free from indefinite detention is through the denial of the pending Motion to Dismiss.

CONCLUSION

WHEREFORE, Petitioner respectfully requests the following:

1. That the Court enter an order denying the Motion to Dismiss;
2. That the Court enter an order requiring Respondents to submit an Answer to the Petition;

3. That the Court take any further action it seems just and proper under the circumstances presented;

Dated: January 8, 2026

Respectfully submitted,

/s/ David Stoller /s/
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CERTIFICATE OF SERVICE

I, David Stoller, certify that on January 8, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

Joy Warner, Assistant U.S. Attorney
400 W. Washington St., Suite 3100
Orlando, Florida 32801

/s/ David Stoller /s/
David Stoller, Esquire
Attorney for Petitioner