

1 ADAM GORDON
United States Attorney
2 LAURA C. SAMBATARO
Assistant U.S. Attorney
3 Maryland Bar
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Tel: (619) 546-9613
6 Fax: (619) 546-7751
Email: Laura.Sambataro@usdoj.gov

7 Attorneys for Respondents

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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 WARLEY BATISTA SILVA,

12 Petitioner,

13 v.

14 GREGORY JOHN
15 ARCHAMBEAULT; et al.,

16 Respondents.
17

Case No.: 25-cv-3158-AGS-BLM

**RETURN IN OPPOSITION
TO PETITION FOR WRIT
OF HABEAS CORPUS**

18 **INTRODUCTION**

19 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the reasons
20 set forth below, the Court should deny Petitioner's requests for relief and dismiss the
21 petition.

22 **FACTUAL BACKGROUND**

23 Petitioner is a native and citizen of Brazil. On April 29, 2023, Petitioner entered the
24 United States between ports of entry at or near San Ysidro, California. Exhibit 1.¹ He was
25 not then in possession of any valid entry documents. Border Patrol determined that
26

27 _____
28 ¹ The attached exhibits are true copies, with redactions of private information, of documents
obtained from ICE counsel.

1 Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C.
2 § 1182(a)(7)(A)(i)(I). Exhibit 2.

3 On May 3, 2023, the Department of Homeland Security (DHS) issued Petitioner a
4 Notice to Appear (NTA), charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)
5 and 8 U.S.C. § 1182(a)(7)(A)(i)(I). Exhibit 1. On July 10, 2023, the NTA was filed with the
6 immigration court, thereby commencing removal proceedings under 8 U.S.C. § 1229a. *Id.*
7 On September 8, 2025, Petitioner was taken into custody by Immigration and Customs
8 Enforcement (ICE) Enforcement Removal Operations (ERO). Exhibit 3. Petitioner
9 appeared, with immigration counsel, before an Immigration Judge (IJ) on October 2, 2025.
10 Exhibit 4. The IJ found Petitioner removable under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*
11 Petitioner made an application for voluntary departure in lieu of removal, and waived appeal
12 of all issues. *Id.* The IJ granted Petitioner “pre-conclusion voluntary departure under
13 Immigration and Nationality Act (INA) § 240B(a), in lieu of removal, without expense to
14 the Government, on or before 12/2/2025” *Id.* The IJ’s order stated that if the Petitioner
15 failed to depart as required, “the above grant of pre-conclusion voluntary departure shall be
16 withdrawn without further notice or proceedings and the following order, entered pursuant
17 to 8 C.F.R. § 1240.26(d) shall become immediately effective: the Respondent shall be
18 removed to Brazil on the charge(s) set forth in the Notice to Appear.” *Id.*

19 Since the entry of the IJ order, Petitioner failed to depart as required, thus resulting
20 in the IJ’s order being converted into a final removal order as of December 3, 2025. Decl.
21 Solares, at ¶ 4. ICE ERO has now begun the process of executing the removal order and
22 removing Petitioner to Brazil. ERO is currently requesting a travel document, which it
23 expects to have the travel document request completed and sent to the British Consulate by
24 December 4, 2025. *Id.* at ¶ 5. Once a travel document is obtained, ERO will arrange
25 Petitioner’s travel to Brazil. *Id.* at ¶ 6. ERO anticipates receiving a travel document for
26 Petitioner in approximately one month. *Id.* As Petitioner is now subject to a final order of
27 removal, he is mandatorily detained under 8 U.S.C. § 1231(a).

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ARGUMENT

A. Petitioner is Lawfully Detained Pursuant to a Final Order of Removal

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. 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 of post-removal detention 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. The Supreme Court limited the statute, allowing post-removal detention “to a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. “[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.*

1 Here, Petitioner’s removal order became final on December 2, 2025. Thus,
2 Petitioner’s six-month presumptively reasonable removal period will not end until
3 approximately June 2, 2026. Courts have repeatedly declined to grant habeas relief where
4 the presumptively reasonable six-month period has not yet elapsed. *See Khalilova v. Smith*,
5 No. 25-CV-2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025) (denying similar
6 habeas petition); *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D.
7 Md. July 22, 2025) (“The government is entitled to its six-month presumptive period before
8 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-Castro*
9 *v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025)
10 (“The Court finds that the Petition is premature because Petitioner has not been detained for
11 more than six months.”); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-10 (E.D. Va. 2006)
12 (finding habeas petition was unripe for review where *Zadvydass* six-month period had not
13 expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12-1392
14 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*, No.
15 CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same).

16 Although the six-month grace period has not lapsed, Petitioner cannot show that there
17 is no significant likelihood of removal in the reasonably foreseeable future. ICE is in the
18 process of obtaining travel documents from Brazil. To effectuate Petitioner’s removal to
19 Brazil, ERO is requesting a travel document from the Brazilian consulate. Solares Decl. at
20 ¶ 5. According to the declaring officer’s experience, “there is a high likelihood of removal
21 to Brazil in the near future.” Solares Decl. at ¶ 6.

22 To the extent Petitioner is challenging ICE’s decision to detain him for the purpose
23 of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) (“Except as
24 provided in this section and *notwithstanding any other provision of law* (statutory or
25 nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and
26 sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or
27 claim by or on behalf of any alien arising from the decision or action by the Attorney
28 General to commence proceedings, adjudicate cases, or *execute removal orders* against any

1 alien under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-*
2 *Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to
3 focus special attention upon, and make special provision for, judicial review of the Attorney
4 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
5 execut[ing] removal orders”—which represent the initiation or prosecution of various stages
6 in the deportation process.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020)
7 (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims
8 stemming from the decision to arrest and detain an alien at the commencement of removal
9 proceedings are not within any court’s jurisdiction”).

10 **B. Improper Claims Should be Dismissed**

11 The Constitution limits federal judicial power to designated “cases” and
12 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human Rights*,
13 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present a “case”
14 or “controversy” within the meaning of Article III). “Absent a real and immediate threat of
15 future injury there can be no case or controversy, and thus no Article III standing for a party
16 seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-BAS-MDD, 2015 WL
17 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl.*
18 *Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a lawsuit brought to force compliance,
19 it is the plaintiff’s burden to establish standing by demonstrating that, if unchecked by the
20 litigation, the defendant’s allegedly wrongful behavior will likely occur or continue, and
21 that the threatened injury is certainly impending.”) (simplified)). At the “irreducible
22 constitutional minimum,” standing requires that a petitioner demonstrate the following: (1)
23 an injury in fact (2) that is fairly traceable to the challenged action of the United States and
24 (3) likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S.
25 555, 560–61 (1992).

26 Moreover, an individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in
27 custody” under federal authority “in violation of the Constitution or laws or treaties of the
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1 United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the
2 legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
3 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
4 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically “provide[s]
5 a means of contesting the lawfulness of restraint and securing release.”). The Ninth Circuit
6 squarely explained how to decide whether a claim sounds in habeas jurisdiction: “[O]ur
7 review of the history and purpose of habeas leads us to conclude the relevant question is
8 whether, based on the allegations in the petition, release is *legally required* irrespective of
9 the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v.*
10 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the
11 petitioner’s claim would “necessarily lead to immediate or speedier release.”); *Guselnikov*
12 *v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal. Aug. 8, 2025)
13 (finding petitioners’ claims did not arise under § 2241 because they were not arguing they
14 were unlawfully in custody and receiving the requested relief would not entitle them to
15 release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D.
16 Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241
17 habeas petition since it cannot be fairly read as attacking ‘the legality or duration of
18 confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

19 Petitioner’s habeas petition asserts inconsistent and improper factual allegations and
20 claims. For purposes of judicial efficiency, Respondents respectfully assert that this habeas
21 petition concerns a pure legal question concerning the legal authority under which Petitioner
22 is detained. There is no controversy concerning any other such claims for this Court to
23 resolve. Federal courts do not have jurisdiction “to give opinions upon moot questions or
24 abstract propositions, or to declare principles or rules of law which cannot affect the matter
25 in issue in the case before it.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9,
26 12 (1992) (internal quotations and citations omitted). “A claim is moot if it has lost its
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1 character as a present, live controversy.” *Am. Rivers v. Nat’l Marine Fisheries Serv.*, 126
2 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted).

3
4 **CONCLUSION**

5 For the reasons stated above, the Court should deny and dismiss the petition.

6
7 DATED: December 3, 2025

Respectfully submitted,

8 ADAM GORDON
9 United States Attorney

10 *s/Laura C. Sambataro*
11 LAURA C. SAMBATARO
12 Assistant United States Attorney

13 Attorneys for Respondents
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