

1 TODD BLANCHE  
Deputy Attorney General of the United States  
2 SIGAL CHATTAH  
First Assistant United States Attorney  
3 District of Nevada  
Nevada Bar Number 8264  
4 TAMER B. BOTROS  
Assistant United States Attorney  
5 Nevada Bar Number 12183  
501 Las Vegas Blvd. South, Suite 1100  
6 Las Vegas, Nevada 89101  
(702) 388-6336  
7 [Tamer.Botros@usdoj.gov](mailto:Tamer.Botros@usdoj.gov)  
*Attorneys for Federal Respondents*

8  
9 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

10 Mehmet Kucuk,

11 Petitioner,

12 v.

13 PAMELA BONDI, Attorney General of the  
United States; KRISTI NOEM, Secretary,  
14 United States Department of Homeland  
Security; MICHAEL BERNACKE, Field  
15 Director, West Valley City Office; TODD  
LYONS, Acting Director; JOHN MATTOS,  
16 Nevada Southern Detention Center,  
Respondents.

Case No. 2:25-cv-02285-APG-MDC

**Federal Respondents' Response to  
Petitioner's Petition For Writ of  
Habeas Corpus Under 28 U.S.C. § 2241  
(ECF No. 1-1)**

17  
18 Federal Respondents hereby file their Response to Petitioner Mehmet Kucuk's  
19 Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1-1).

20 **I. Factual Background**

21 On August 27, 2024, Petitioner Mehmet Kucuk ("Petitioner") who is a Turkish  
22 citizen was arrested by ICE in California for unlawfully entering the United States without  
23 being inspected by an immigration officer at a designated Port of Entry. See I-213 of  
24 Petitioner Mehmet Kucuk as Exhibit A. Petitioner was processed for expedited removal  
25 under 8 U.S.C. § 1225. Petitioner admitted to illegally crossing the international boundary  
26 without being inspected by an immigration officer at a designated port of entry. While in  
27 Border Patrol custody, Petitioner did not manifest a fear of return, express an intention to  
28 apply for asylum or related protection, express a fear of persecution or torture, or express a

1 fear of return to Turkey which is his country of removal. See Exhibit A. On November 14,  
2 2024, United States and Immigration Services determined that Petitioner has established  
3 past persecution, and the presumption of persecution has not been rebutted due to his  
4 Kurdish race. See Reasonable Probability Determination Checklist and Written Analysis  
5 for Noncitizens Subject to the Securing the Border Limitation on Asylum Eligibility  
6 attached as Exhibit B. On November 29, 2024, a hearing was scheduled before the  
7 Immigration Judge (“IJ”) and Petitioner was provided with a Notice to Appear. See Notice  
8 to Appear as Exhibit C. On March 19, 2025, there was a Withholding of Removal that was  
9 granted pursuant to 8 U.S.C. § 1231(b)(3) which pertains to restriction on removal to a  
10 country where alien’s life or freedom would be threatened because of the alien’s race,  
11 religion, nationality, membership in a particular social group, or political opinion. See  
12 Order of the Immigration Judge as Exhibit D. United States Department of Homeland  
13 Security (“DHS”) reserved its right to appeal the decision and did not. Petitioner waived  
14 appeal. Petitioner is still detained because ICE has not located an alternative country for  
15 removal since April 19, 2025. On September 2, 2025, Petitioner filed a Motion to Reopen,  
16 Request for Stay of Removal, and Custody Redetermination (Bond Hearing). See Motion  
17 to Reopen attached as Exhibit E. On September 4, 2005, Petitioner’s Motion was denied  
18 because it was time barred, as it was submitted more than 90 days after the entry of an  
19 administratively final Order and due to the issues raised in the request to reopen were  
20 matters that should have been raised on appeal and are now outside the jurisdiction of the  
21 immigration judge. See Decision and Order of the Immigration Judge September 4, 2025,  
22 attached as Exhibit F. The IJ ruled that the bare allegation that Petitioner did not  
23 understand the interpreter was insufficient to move the Court to reopen his case and that  
24 allegation was not borne out by a review of the Digital Audio Recording. See Exhibit F.  
25  
26  
27  
28

1 Furthermore, the IJ further ruled that there was no explanation by the Petitioner, who  
2 knew he was in removal proceedings and knew he had his trial, waited more than five  
3 months to attempt to reopen his case and Petitioner has not alleged any exceptional  
4 circumstances that would warrant granting a motion to reopen. See Exhibit F. Petitioner is  
5 still detained because ICE has not located an alternative country for removal. On  
6 November 5, 2025, ICE issued a Decision to Continue Detention. See Decision to  
7 Continue Detention attached as Exhibit G. In the Decision, it outlined the facts of  
8 Petitioner's case and stated that Petitioner was issued a travel document by the  
9 Government of Turkey and removal is pending to a third country. See Exhibit G.  
10 Furthermore, the Decision specifically stated, "ICE has reason to believe there's a  
11 significant likelihood that your removal will occur in the reasonably foreseeable future,  
12 therefore, you are to remain in ICE custody at this time, as ICE is unable to conclude that  
13 the factors set forth at 8 C.F.R 241.4(e) have been satisfied." See Exhibit G. Petitioner is  
14 seeking to be released from detention. ECF No. 1-1, Page 12, line 4. Also, Petitioner is  
15 seeking an evidentiary hearing concerning the allegations in his Petition. ECF No. 1-1,  
16 Page 12, line 7. The vast majority of Petitioner's Petition includes case law and statutes in  
17 each of his "Grounds for Relief," however, there is very little application of the law to his  
18 specific case.  
19  
20  
21

22 For the reasons set forth in this Response, Federal Respondents' position is that the  
23 Petition should be denied, because Petitioner has been afforded due process throughout the  
24 duration of his detention. Federal Respondents are actively working on his case and based  
25 on ICE's recent determination, his removal is reasonably foreseeable and does not violate 8  
26 U.S.C. § 1231(a)(6), and Administrative Procedures Act.  
27  
28

## JURISDICTION AND BURDEN OF PROOF

1  
2 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited  
3 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon*  
4 *Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).  
5 “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789  
6 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1974 n. 20  
7 (2020). Section 2241 of Title 28 provides district courts with jurisdiction to hear federal  
8 habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in  
9 custody in violation of the Constitution or laws or treaties of the United States to warrant  
10 relief. *See* 28 U.S.C. § 2241(c).  
11  
12

### **II. Legal Argument**

#### **A. Petitioner’s Continued Detention Does Not Violate His Fifth Amendment Right to Due Process because his removal is reasonably foreseeable**

13  
14  
15 The Ninth Circuit, applying the Supreme Court's holding in *Thuraissigiam*, has  
16 explicitly stated that, “[a]ccordingly, any rights [an inadmissible alien] may have in regard  
17 to removal or admission are purely statutory in nature and are not derived from, or  
18 protected by, the Constitution's Due Process Clause.” *Mendoza-Linares v. Garland*, 51 F.4th  
19 1146, 1167 (9th Cir. 2022). Ultimately, “[t]he recognized liberty interests of U.S. citizens  
20 and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the  
21 proposition that Congress may make rules as to aliens that would be unacceptable if  
22 applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)  
23 (quoting *Demore v. Kim*, 538 U.S. 510, 522, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003)).  
24 *Zelaya-Gonzalez v. Matuszewski*, 2023 U.S. Dist. LEXIS 72761, \*10.  
25  
26

27 In this case, Petitioner has been afforded due process throughout his detention. On  
28 November 29, 2024, he was provided with a court hearing and given a Notice to Appear.

1 On November 14, 2024, United States and Immigration Services determined that Petitioner  
2 has established past persecution, and the presumption of persecution has not been rebutted  
3 due to his Kurdish race. On March 19, 2025, there was a Withholding of Removal that was  
4 granted pursuant to 8 U.S.C. § 1231(b)(3) which pertains to restriction on removal to a  
5 country where alien's life or freedom would be threatened because of the alien's race,  
6 religion, nationality, membership in a particular social group, or political opinion. On  
7 September 2, 2025, Petitioner was given an opportunity to file a Motion to Reopen,  
8 Request for Stay of Removal, and Custody Redetermination (Bond Hearing) which was  
9 denied due to being submitted more than 90 days after the entry of an administratively final  
10 Order case and hence was time barred. Furthermore, ICE recently reviewed his custody  
11 status and determined that Petitioner will not be released from custody at this time and  
12 advised him that this Decision does not preclude him from bringing forth evidence in the  
13 future to demonstrate a good reason why removal is unlikely. See Exhibit G. Petitioner's  
14 claim that he was denied due process is unpersuasive given the amount of proceedings that  
15 took place regarding Petitioner's matter.  
16  
17

18 **B. Petitioner's Continued Detention Does Not Violate 8 U.S.C. § 1231(a)(6)**

19 Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(6) as he has been issued a  
20 final order of removal, the ninety-day mandatory removal period set forth in 8 U.S.C. §  
21 1231(a)(1)(A) has passed.  
22

23 8 U.S.C. § 1231(a)(6) states:

24 **(6) Inadmissible or criminal aliens**

25 An alien ordered removed who is inadmissible under section 1182 of this title,  
26 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who  
27 has been determined by the Attorney General to be a risk to the community or  
28 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).

1 The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a  
2 noncitizen detained under this statutory authority has no right to a bond hearing or release.  
3 See *Arteaga-Martinez*, 142 S. Ct. at 1832-34; *id.* at 1832 (“Section 1231(a)(6) does not  
4 expressly specify how long detention past the 90-day removal period may continue for those  
5 who fall within the four designated statutory categories.”); *id.* at 1833. the Supreme Court  
6 has repeatedly “recognized detention during deportation proceedings as a constitutionally  
7 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); see also,  
8 e.g., *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the  
9 INS procedures are faulty because they do not provide for automatic review by an  
10 immigration judge of the initial deportability and custody determinations”); *Abel v. United*  
11 *States*, 362 U.S. 217, 233-34 (1960) (noting the “impressive historical evidence of acceptance  
12 of the validity of statutes providing for administrative deportation arrest from almost the  
13 beginning of the Nation”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is  
14 necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228,  
15 235 (1896) (“We think it clear that detention or temporary confinement, as part of the  
16 means necessary to give effect to the provisions for the exclusion or expulsion of aliens,  
17 would be valid.”). As the Supreme Court has explained, “[i]n the exercise of its broad  
18 power over naturalization and immigration, Congress regularly makes rules that would be  
19 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner’s  
20 substantive due process claim therefore fails. See *Demore*, 538 U.S. at 531; see also *Zadvydas*,  
21 533 U.S. at 701 (recognizing a “presumptively reasonable period of detention” of up to six  
22 months to effectuate a final removal order).

23 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory  
24 right to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a  
25 due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In  
26 *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s  
27 demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would  
28

1 raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme  
2 Court proceeded to conclude that detention of a noncitizen for up to six months under 8  
3 U.S.C. § 1231 is “presumptively reasonable”, but added that “once the [noncitizen] provides  
4 good reason to believe that there is no significant likelihood of removal in the reasonably  
5 foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that  
6 showing.” *Id.* at 700-01.

8 In this case, Petitioner’s detention under 8 U.S.C. § 1231(a)(6) is, as interpreted by  
9 the Supreme Court, squarely in accordance with the government’s statutory authority and  
10 thus, the relief he seeks, is not warranted by statute. *See* 8 U.S.C. § 1231(a)(6); *Arteaga-*  
11 *Martinez*, 142 S. Ct. at 1832-34.

13 Petitioner’s detention under 8 U.S.C. § 1231(a)(6) does not violate his due process  
14 rights as he has not met his burden of setting forth good reason to believe that there is no  
15 significant likelihood of his removal to a third country in the reasonably foreseeable future.  
16 *See Zadvydas*, 533 U.S. at 701. In fact, Petitioner fails to outline any reasoning or basis for  
17 his allegation that his removal is not reasonably foreseeable. After a recent review of his case  
18 by ICE, it was determined that Petitioner was issued a travel document by the Government  
19 of Turkey and removal is pending to a third country removal. It was also determined that  
20 ICE has reason to believe there’s a significant likelihood that Petitioner’s removal will occur  
21 in the reasonably foreseeable future, and he is to remain in ICE custody at this time. *See*  
22 Exhibit G. Furthermore, in the Decision it stated that the decision does not preclude  
23 Petitioner from bringing forth evidence in the future to demonstrate a good reason why his  
24 removal is unlikely. *See* Exhibit G.

26 ///

28 ///

1                   **C. ICE’s Continued Detention of Petitioner Does Not violate the**  
2                   **Administrative Procedures Act**

3                   The Ninth Circuit identified three reasons to require exhaustion before entertaining  
4 a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency’s  
5 “expertise” makes its “consideration necessary to generate a proper record and reach a  
6 proper decision.” *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).  
7 Second, excusing exhaustion encourages “the deliberate bypass of the administrative  
8 scheme.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, “administrative review is  
9 likely to allow the agency to correct its own mistakes and to preclude the need for judicial  
10 review.” *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*,  
11 488 F.3d at 815. The Court should dismiss the Petition. “Exhaustion is generally required  
12 as a matter of preventing premature interference with agency processes, so that the agency  
13 may function efficiently and so that it may have an opportunity to correct its own errors, to  
14 afford the parties and the courts the benefit of its experience and expertise, and to compile a  
15 record which is adequate for judicial review.” *Global Rescue Jets, LLC v. Kaiser Foundation*  
16 *Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S.  
17 749, 765 (1975)). Indeed, “agencies, not the courts, ought to have primary responsibility for  
18 the programs that Congress has charged them to administer.” *McCarthy*, 503 U.S. at 145.

19                   Petitioner also asserts an APA claim. Civil APA claims are not cognizable in the  
20 habeas context *See, e.g., Mesina v. Wiley*, 352 F. App’x 240, 241-42 (10th Cir. 2009) (holding  
21 that petition asserting APA claim “does not state a habeas claim”).

22                   In this case, Petitioner’s APA claim fails as a matter of law. Furthermore, Petitioner  
23 received a detailed Decision to continue his detention by ICE that specifically outlined the  
24 reasoning for his continuing detention and that he had been issued a travel document by  
25 the Government of Turkey and removal is pending to a third country removal and that ICE  
26  
27  
28

1 has reason to believe there's a significant likelihood that his removal will occur in the  
2 reasonably foreseeable future. See Exhibit G. Based on the evidence, Petitioner was  
3 afforded an opportunity to be heard and was granted a withholding of removal to Turkey  
4 and ICE is now in the process of finding an alternative country that he can be removed to.

5  
6 **D. ICE's Policy to Remove Noncitizens to a third country Does not violate the  
Administrative Procedures Act**

7 Petitioner voluntarily applied to not be removed to his country of citizenship, which  
8 is Turkey. On November 14, 2024, United States and Immigration Services determined  
9 that Petitioner has established past persecution, and the presumption of persecution has not  
10 been rebutted due to his Kurdish race. On March 19, 2025, Petitioner was ordered removed  
11 from the U.S. to Turkey and granted withholding of removal by an IJ. Currently, ICE is  
12 working on finding an alternative country for removal. Furthermore, Petitioner has been  
13 issued a travel document from Turkey. This is not a matter of indefinite detention. In fact,  
14 ICE recently reviewed Petitioner's case and determined that it has reason to believe there's  
15 a significant likelihood that Petitioner's removal will occur in the reasonably foreseeable  
16 future. See Exhibit G. Therefore, ICE' policy to remove noncitizens to a third country does  
17 not violate the APA.  
18  
19

20 **E. Petitioner's Detention Pending Removal to a Third Country Does Not violate  
21 Due Process Clause of the Fifth Amendment**

22 Section 1231(a)(6) satisfies both the substantive and procedural components of the  
23 Due Process Clause. The Supreme Court has explained that detention is "a constitutionally  
24 valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Post-  
25 order detention helps ensure the removal of noncitizens who have already been "ordered  
26 removed" from the United States. 8 U.S.C. § 1231(a)(6). Furthermore, § 1231(a)(6), as  
27 implemented by the existing regulations, does not violate the Due Process Clause "[w]hen  
28

1 detention crosses the six-month threshold.” *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1091  
2 (9th Cir. 2011).

3 In this case, although the detention of Petitioner has exceeded six months, ICE  
4 recently reviewed Petitioner’s case and determined that it has reason to believe there’s a  
5 significant likelihood that Petitioner’s removal will occur in the reasonably foreseeable  
6 future. See Exhibit G.  
7

8 **III. Conclusion**

9 Based on the above, this Court should deny Petitioner’s Petition.

10 Respectfully submitted this 12th day of January 2026.

11  
12 TODD BLANCHE  
13 Deputy Attorney General of The United States  
14 SIGAL CHATTAH  
15 First Assistant United States Attorney

16 /s/ Tamer Botros  
TAMER B. BOTROS

17 Assistant United States Attorney  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28