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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ARTUR SARKISOV,

Petitioner,

v.

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

Respondents.

Case No. 2:25-cv-02321-JAD-DJA

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Federal Respondents Pamela Bondi, Kristi Noem, Michael Bernacke, and Todd Lyons, through undersigned counsel, hereby file their response to Petitioner Artur Sarkisov's Petition for Writ of Habeas Corpus. ECF No. 1-1. The petition should be denied for the reasons stated below. Petitioner filed his petition on November 21, 2025, two months after his final order of removal was rendered on September 25, 2025, and well before the six-month reasonable detention period under *Zadvydas*. In addition, DHS and the State Department are working diligently in obtaining travel documents for this Petitioner to Azerbaijan or Armenia, and his removal to one of these two countries is within the reasonably foreseeable future. Furthermore, this petitioner has a criminal conviction of possession of intent to distribute meth on June 14, 2023.

This response is supported by the following memorandum of points and authorities.

Respectfully submitted this 2nd day of January 2026.

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SIGAL CHATTAH
First Assistant United States Attorney

/s/ Virginia T. Tomova
VIRGINIA T. TOMOVA
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Memorandum of Points and Authorities

I. Introduction

Petitioner has a final order of removal from December 8, 2003, following a finding by an immigration judge that he is removable from the United States after his application for asylum, his application for cancellation of removal under § 240(A) and his application for a waiver were all denied. *See* Immigration Order, attached as Exhibit A. After Petitioner's deferral of removal under CAT was granted on August 21, 2025, ordering his removal to either Azerbaijan or Armenia, petitioner waived his appeal on that order. This order became a final removal order on September 25, 2025. Petitioner filed this petition for habeas on November 21, 2025, which is well before the expiration of the six-month reasonable detention period under *Zadvydas*. DHS and the State Department are working diligently in obtaining travel documents for this Petitioner's removal to either Azerbaijan or Armenia, thus his removal to one of these third countries is within the reasonably foreseeable future.

Petitioner is detained subject to a final removal order and after he was convicted of possession with intent to distribute meth. His conviction is dated June 14, 2023. *See* Exhibit B. After serving his sentence, petitioner was detained by ICE since May 3, 2025. While in detention, Petitioner filed for a Deferral of Removal under the Convention Against Torture (CAT) application, which was granted by an Immigration Judge, on August 21, 2025. *See* Immigration Order, dated August 21, 2025, attached as Exhibit C. In that order, the IJ confirmed that petitioner is removable from the United States and ordered the petitioner to be removed to Azerbaijan or in the alternative to Armenia. *Id.* Petitioner waived the appeal

from that order, and such order became a final order of removal on September 25, 2025. *Id.* Petitioner filed his petition on November 21, 2025, two months after his final order of removal and well before the six-month reasonable detention period under *Zadvydas*. Since the above was issued, Enforcement and Removal Operations office has contacted the State Department for third country removal assistance and is waiting for the State Department to provide further guidance on the removal of this petitioner to either Azerbaijan or Armenia. Petitioner is held in immigration detention while DHS attempts to obtain his removal documents to either Azerbaijan or Armenia. All of this was lawful under the INA.

Petitioner now brings a habeas action under 28 U.S.C. § 2241 seeking immediate release. But the Court does not have jurisdiction over the petition, because 8 U.S.C. § 1252 bars review of his claims. And even if the Court had jurisdiction, the claims fail on the merits. The procedures followed by DHS regarding Petitioner's detention complied with the INA and relevant regulations. They provided notice and opportunities for review. Petitioner waived an appeal of the Immigration Judge's Order dated August 21, 2025. There is no violation of the Administrative Procedure Act ("APA") or due process. The Court should dismiss the petition.

II. Background

On November 21, 2025, Petitioner filed his Petition for Writ of Habeas Corpus. ECF No. 1-1. On December 3, 2025, the Court issued an order for Respondents to file and serve their response to the petition by December 17, 2025. ECF No. 5. The Federal Respondents later moved for two extensions of the due date for a response (ECF Nos. 10 & 12), which the Court granted (ECF Nos. 11 & 14), thus extending the due date for a response up to and including December 29, 2025. Federal Respondents were not able to meet that deadline due to an excusable neglect, due to overlapping court-ordered deadlines, previously approved international family leave for the handling AUSA Ruiz, federal holidays and flight delays of paralegal staff which also left the office without supporting assistance on the day the response was due. On December 30, 2025, Federal Respondents filed a motion for retroactive extension of time to file a response to petition for habeas corpus, requesting that

the Court allows Federal Respondents to file a response to the petition by January 2, 2026. ECF No.15. This motion is currently pending before the Court.

In his petition, the petitioner claims that his detention is unconstitutional because his deportation "is not reasonably foreseeable." ECF No. 1-1, p. 7:4-5. Petitioner also argues that ICE has "not demonstrated that he was afforded proper procedures related to his continued detention or that he warrants continued detention under the regulations" in purported violation of the APA and Due Process Clause. *Id.*, p. 9:18-19. Finally, Petitioner brings another due process claim, again arguing that he "has not had an opportunity to contest removal to any third country on the ground that he may face prosecution or torture if he is removed to that country." *Id.*, p. 11:18-20. Petitioner waived his appeal of the Immigration Judge order for him to be removed to either Azerbaijan or Armenia, after his deferral of removal under CAT was granted. Exhibit C.

III. Relevant Statutory and Regulatory Background

a. Removal and Detention Under 8 U.S.C. § 1231(a)

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). And the mandatory removal period begins on the latest of three possible dates: (1) the date an order of removal becomes "administratively final," (2) the date of the final order of any court that entered a stay of removal, or (3) the date the alien is released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government 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, the government 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 the government 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.*

b. Orders of Supervision

In the event the government does not further detain and instead releases the alien at the end of the 90-day mandatory removal period, the government must do so under conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that a alien who "does not leave or is not removed within the removal period … shall be subject to supervision"); *see also* 8 C.F.R. §§ 241.4(j); 241.5. Regulations promulgated pursuant to the INA require that conditions of supervised release include: reporting to an immigration officer; making "efforts to obtain a travel document and assist[ing] the [government] in obtaining a travel document"; reporting for physical and mental examinations; obtaining advance approval of travel; and providing ICE with written notice of any address changes. *See* 8 C.F.R. § 241.5(a). If the alien violates a condition of release, the government can revoke the order of supervision and return the alien to custody. *See* 8 C.F.R. § 241.4(l). In that scenario, the government must notify the alien of "the reasons for revocation," and "conduct an initial interview promptly" to give the alien "an opportunity to respond to the reasons for revocation stated in the notification." *See id.* § 241.4(l)(1). If the alien is not released after the initial interview, there is a subsequent review process, one which entails a records review and scheduling of an interview which ordinarily takes place within three months of the

revocation of release. *Id.* § 241.4(l)(3). The final review includes an evaluation of any disputed facts, and a decision as to whether the facts as determined support revocation and further denial of release. *Id.* Thereafter, the government conducts annual custody reviews in accordance with 8 C.F.R. §§ 241.4(i), (j), and (k). *Id.*

c. Suspension of Removal Under 8 U.S.C. § 1231(a)(1)(C)

As noted above, a separate basis for detention of aliens with final orders of removal is via an extension of the removal period in circumstances where the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8 U.S.C. § 1231(a)(1)(C). In such cases, the government must serve the alien a "Notice of Failure to Comply," which sets forth the relevant statutory provisions in play (8 U.S.C. §§ 1231(a)(1)(C), 1253(a)) and provides "an explanation of the necessary steps that the alien must take in order to comply with the statutory requirements." 8 C.F.R. § 241.4(g)(5)(ii). The government must also advise the alien that the "Notice of Failure to Comply shall have the effect of extending the removal period as provided by law, if the removal period has not yet expired," and that the government is not required to complete any scheduled custody reviews under 8 C.F.R. § 241.4 until the alien has "demonstrated compliance with the statutory obligations." *Id.* § 241.4(g)(5)(iii).

d. Removal to Third Country

As a general matter, aliens ordered removed "may designate one country to which [he or she] wants to be removed," and DHS "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or her designated country, including if "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien "shall" be removed to his or her country of nationality or citizenship, unless the country "is not willing to accept" the alien." *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the

alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). In addition, DHS "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of [his or her] race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

IV. Legal Argument

a. The INA and Real ID Act Deprive This Court of Jurisdiction

Federal courts are courts of limited jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Id.* (citations omitted); *see also Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Courts created by statute can have no jurisdiction but such as statute confers."); *cf. Romano v. Warden, FCI Fairton*, No. 23-2919 (CPO), 2025 WL 1189877, at *8 (D.N.J. Apr. 24, 2025) (observing, in prison habeas context, "[f]ederal courts are courts of limited jurisdiction," and where "Congress has committed a decision to the unreviewable discretion of the BOP . . . § 2241 offers no basis for judicial intervention."). Through this habeas action, Petitioner challenges his present detention for purposes of executing a final order of removal. Congress, however, divested this Court from hearing such claims by way of the INA and the REAL ID Act. *See* 8 U.S.C. §§ 1252(b)(9), (g). For these reasons, as discussed below, the Court lacks jurisdiction over Petitioner's claims challenging his detention pending removal. At the outset, 8 U.S.C. § 1252(g), as amended by the REAL ID Act, deprives courts of jurisdiction—including habeas corpus jurisdiction—over reviewing "any" claim "arising from the decision or action" to (among other things) "execute removal orders." Put differently, this provision bars habeas review in federal district court of claims arising from a decision or action to "execute" a final order of removal.

See Reno v. American Arab Anti-Discrimination Committee ("AADC"), 525 U.S. 471, 482 (1999).[1] That provision bars Petitioner's claims here.

Indeed, every circuit court of appeals to address the issue has held that § 1252(g) eliminates subject-matter jurisdiction over habeas challenges (including those raising constitutional claims) to an arrest or detention for the purpose of executing a final removal order. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding court lacked jurisdiction over habeas challenge to the exercise of discretion to execute removal order); *see also Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) ("The plain text of § 1252(g) covers decisions about *whether* and *when* to execute a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021) (holding § 1252(g) barred review of decision to execute removal order while individual sought administrative relief); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review.")[2]

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[1] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3).

[2] Relatedly, § 1252(g) bars district court review of challenges to the method by which DHS chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process."); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest Saadulloev on April 4, 2023, clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."

The Third Circuit's decision in *Tazu* is instructive. There, the petitioner sought to challenge the government's decision to re-detain him for prompt removal, claiming — much like Petitioner here — that a revocation of supervised release without notice and a revocation interview allegedly violated agency rules and due process. *See Tazu*, 975 F.3d at 298. The Third Circuit found that claim barred by 8 U.S.C. § 1252(g) because it sought to challenge "a key part of executing" a removal order: a "short re-detention for removal." *Id.* As the Third Circuit recognized, re-detaining the petitioner was "simply the enforcement mechanism the [government] picked to execute [the petitioner's] removal order." *Id.* at 298-99. And § 1252(g) "funnels review" of such claims away from the district courts, and to the courts of appeals through a petition for review. *Id.* at 299. Here, as in *Tazu*, Petitioner challenges the enforcement mechanism utilized to execute his final order of removal: his immigration detention and pending removal to third country – Azerbaijan or Armenia. Here, as in *Tazu*, this Court lacks jurisdiction over such claims under 8 U.S.C. § 1252(g).

Petitioner's challenges regarding the execution of his final removal order are also foreclosed under 8 U.S.C. § 1252(b)(9). In passing the REAL ID Act, Congress prescribed a single path for Article III review of removal orders: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5); *see also Verde-Rodriguez v. Att'y Gen. U.S.*, 734 F.3d 198, 201 (3d Cir. 2013). And as the REAL ID Act further provides. "[j]udicial review of *all questions of law and fact*, including interpretation 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." 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction, 8 U.S.C. § 1252(b)(9) and § 1252(a)(5) express Congress's intent to funnel judicial review of every aspect of removal proceedings into a petition for review filed in the courts of appeals. *See Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (recognizing that these provisions "clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to

removal orders heard in a single forum (the courts of appeals)" via petition for review). These provisions sweep more broadly than § 1252(g). *See Reno*, 525 U.S. at 483. Indeed, pursuant to § 1252(b)(9) ad 1252(a)(5), "most claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020); *see also Reno*, 525 U.S. at 483 (describing § 1252(b)(9) as an "unmistakable zipper clause," and defining a zipper clause as one "that says 'no judicial review in deportation cases unless this section provides judicial review.'"). Here, 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction over Petitioner's claims.

Once again, the Third Circuit's *Tazu* decision guides the analysis. In another part of that decision, the Third Circuit held that the same claims concerning a revocation of supervised release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9) because the claims arose from actions taken to execute the petitioner's removal. *Tazu*, 975 F.3d at 299. Here, as in *Tazu*, Petitioner's claims challenge the government's decision to detain him for removal. Petitioner's claims arise directly out of actions taken to remove him, and the questions raised by those claims are intertwined with his removal. *See id.* Another recent decision from the District Court in *Khalil v. Joyce*, No. 25-1963 (MEF), ECF No. 214, 2025 WL 1232369 (D.N.J. Apr. 29, 2025), does not cast doubt on the conclusion that 8 U.S.C. §§ 1252(g) and 1252(b)(9) apply here. In that case, unlike here, the petitioner had not been issued a final removal order, and so the District Court concluded that § 1252(b)(9) did not apply because that provision "takes away federal district court jurisdiction only after an order of removal has been entered," and "none ha[d] been entered" in that case. *Id.* at *60. As to § 1252(g), the District Court found that it was inapplicable because the provision "pulls away jurisdiction over specific actions" by DHS — "not over actions by the Secretary of State, like [the] determination" at issue, "and not over across-the-board policies, like the one alleged" in that case. *Id.* Here, Petitioner does not challenge any action by the Secretary of State, nor does he attack any alleged broad-based policies. The reasoning behind the recent jurisdictional decision in *Khalil* does not affect the conclusion here. That conclusion, for the reasons above, is that Petitioner's claims fall within the INA's

jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9), so the Court should dismiss the petition for lack of jurisdiction. [3]

b. Petitioner's Detention is Lawful

There is no dispute that Petitioner is subject to a final order of removal. *See generally* ECF No. 1-1. As a result, the "post-order" detention provisions of 8 U.S.C. § 1231 govern. Those provisions require a 90-day mandatory removal period during which immigration officials must detain the alien while attempting to secure his or her removal. *See* 8 U.S.C. §§ 1231(a)(1), (2); *see Zadvydas,* 533 U.S. 683 ("After entry of a final removal order and during the 90-day removal period quo . . . aliens must be held in custody." (internal citation omitted)). Congress, however, provided for the detention of aliens following the 90-day removal period in certain circumstances. As discussed, the Supreme Court has interpreted 8 U.S.C. § 1231(a)(6) to allow for post-order detention for a period "reasonably necessary to bring about the alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. And the Court held that detention for a period of six months is "presumptively reasonable." *Id.* After that six-month period, the alien bears the burden of showing that "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* If the alien successfully makes that showing, "the Government must respond with evidence sufficient to rebut that showing." *Id.* In addition, the 90-day removal period may be tolled and the alien "may remain in detention during such extended period if [he or she] 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). Here, Petitioner challenges his present detention, which is subject to a final removal order as of September 25, 2025. That detention is lawful and presumptively

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[3] Respondents are also aware of another out-of-district case, *Patel v. Barr*, No. CV 20-3856, 2020 WL 6888250, at *3 (E.D. Pa. Nov. 24, 2020), but respectfully submit that the case is also distinguishable. In *Patel*, the district court held that the jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(b)(9) and 1252(g) did not apply, notwithstanding *Tazu*, because while Tazu had a pending petition for review and had been granted a stay of removal, Patel had neither. Because, in *Patel*, the Board of Immigration Appeals delayed ruling on Patel's various motions, the court found that Patel "ha[d] no access to judicial review." *Id.* at *3. Here, however, Petitioner's immigration decisions are administratively final. Petitioner could have sought review of the immigration judge's decision. But he did not, and waived his administrative appeal, thus rendering that decision by the immigration judge administratively final.

reasonable under *Zadvydas*, because Petitioner filed his petition challenging his detention two months after his final removal order was rendered. According to *Zadvydas*, his detention is reasonable within the six months of the final removal order, which in Petitioner's case does not expire until March 25, 2026. To hold otherwise, Petitioner would have to demonstrate that he has been in (1) "post-removal order detention in excess of six months," and there is (2) "evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Jaime F. v. Barr*, No. CV 19-20706 (ES), 2020 WL 2316437, at *5 (D.N.J. May 11, 2020) (quotation omitted); *see also, e.g.*, *Qing Di Wang v. Carbone*, No. CIV.A. 05-2386JAP, 2005 WL 2656677, at *3 (D.N.J. Oct. 17, 2005). Petitioner makes neither showing.

i. Petitioner's Zadvydas Claim Is Premature

At the outset, Petitioner's *Zadvydas* claim is premature because he has been detained on a final order of removal for less than the "presumptively reasonable" six-month period. *See* 533 U.S. at 701. Based on a straightforward application of *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. Warden, Essex Cnty. Corr. Facility*, No. CV 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021); *see also Luma v. Aviles*, No. CIV.A. 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."). In this case, Petitioner was initially detained for the 90-day removal period after his final removal order was issued by an Immigration Judge, on December 8, 2003. He was then released. Petitioner has been in ICE custody since May 3, 2025, after he served his criminal sentence for possession with intent to distribute meth. During his current detention, Petitioner filed for a Deferral of Removal under the Convention Against Torture, which was granted on August 21, 2025, ordering his removal to Azerbaijan or Armenia. Exhibit C. Petitioner had until September 21, 2025, to appeal that order. Petitioner waived an appeal. Thus, the order became final on September 21,

2025. Petitioner filed his writ for habeas corpus challenging his immigration detention pursuant to the final removal order on November 21, 2025, two months after his final removal order was rendered, and four months prior to the reasonable detention period under *Zadvydas*. The Court should dismiss the petitioner without prejudice as premature because Petitioner has not been detained beyond the six-month period set forth in *Zadvydas*.

ii. Petitioner Cannot Establish That There Is No Significant Likelihood of His Removal in The Reasonably Foreseeable Future

Petitioner cannot demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701 (explaining alien challenging detention beyond six-month period bears burden of showing there is no significant likelihood of removal in reasonably foreseeable future). "Numerous courts in this District have held that a detainee's failure to cooperate in obtaining travel documents precludes a finding that his or her removal is not reasonably foreseeable." *Ugarte v. Green*, No. CV 17-1436 (SRC), 2017 WL 6376498, at *3 (D.N.J. Dec. 13, 2017) (collecting cases); *see also, e.g.*, *Conceicao v. Holder*, No. CIV.A. 12-4668 CCC, 2013 WL 1121373, at *3 (D.N.J. Mar. 13, 2013) ("[W]here Petitioner is refusing to sign the necessary travel documents, he has failed to cooperate in his removal and has failed, in this Court, to establish that there is no likelihood of his removal in the reasonably foreseeable future."); *Camara v. Gonzalez*, No. CIV.A.06-1568 (JAG), 2007 WL 4322949, at *4 (D.N.J. Dec. 6, 2007) (finding petitioner did not state constitutional claim under *Zadvydas* due to failure to cooperate with obtaining necessary travel documentation). Here, Petitioner received a final order of removal on December 8, 2003. Exhibit A. But he does not allege he made any attempt to cooperate in his removal in the more than 12 years since then. He does not allege that he made any effort to obtain travel documents, such as by submitting applications for travel documents to embassies or consulates as was required by the INA. That failure to cooperate in removal forecloses Petitioner's *Zadvydas* claim.

For similar reasons, Petitioner's detention is also lawful under 8 U.S.C. § 1231(a)(1)(C), which provides for suspension of the removal period and detention "beyond

a period of 90 days" if an alien "fails or refuses to make timely application in good faith for travel or other documents necessary to [his or her] departure." "Courts have long held that [8 U.S.C. § 1231(a)(1)(C)] not only stands for the proposition that the removal period may be extended where an alien is the impediment to his [or her] own removal, but also that such an alien cannot demand his [or her] release under *Zadvydas* as he [or she] has the keys to his [or her] freedom in his [or her] pocket and could likely effectuate his [or her] removal by providing the necessary information to the appropriate officials." *Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *3 (D.N.J. Oct. 3, 2016). Here, again, Petitioner does not allege that he made any effort to assist in his removal, which is basis for revocation of a supervised release.[4] Petitioner was detained after he served a criminal conviction for intent to distribute meth. Once the Petitioner was detained, he filed for a Deferral of Removal under the Convention Against Torture, which was granted on August 21, 2025, ordering his removal to Azerbaijan or Armenia. Exhibit C. Petitioner had until September 21, 2025, to appeal that order. Petitioner waived an appeal. *Id.* Thus, the order became final on September 21, 2025.

In the end, the INA imposes an affirmative duty on an alien "to make timely application in good faith for travel and other documents necessary to [his or her] departure," and prescribes criminal penalties for willful failure to do so. *See* 8 U.S.C. § 1253(a)(1). Courts examining prolonged detention claims have thus considered whether a petitioner has acted in a manner as to hinder or prevent removal such that the six-month presumptively reasonable period under *Zadvydas* should be tolled. Where an alien "takes actions delaying his/her removal (e.g. by refusing to cooperate with the ICE's removal efforts)," he or she

[4] Whether ICE has formally served Petitioner with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) does not foreclose application of 8 U.S.C. § 1231(a)(1)(C) here. Indeed, the governing regulations specifically provide that "[t]he fact that [DHS] does not provide a Notice of Failure to Comply within the 90-day removal period, to an alien who has failed to comply with the requirements of 8 U.S.C. § 1231(a)(1)(C)] shall not have the effect of excusing the alien's conduct." 8 C.F.R. § 241.4(g)(5)(iv); *see also Qi Xiang Ling v. Hendricks*, No. CIV. 13-7610 KM, 2014 WL 1310294, at *6 (D.N.J. Mar. 27, 2014). Accordingly, courts have found the removal period extended under 8 U.S.C. § 1231(a)(1)(C) even where the government has not yet technically served a Notice of Failure to Comply. *See id.*; *see also de Souza Neto v. Smith*, No. CV 17-11979-RGS, 2017 WL 6337464, at *1 (D. Mass. Oct. 16, 2017) ("Although [petitioner] alleges that ICE did not provide her with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) that her removal period has been extended, the lack of notice 'shall not have the effect of excusing the alien's conduct.' 8 C.F.R. § 241.4(g)(5)(iv)").

"cannot demand his/her release upon expiration of these six months." *Zhang Xingquan v. Holder*, No. CIV.A. 12-7650 MAS, 2013 WL 1750145, at *3 (D.N.J. Apr. 23, 2013). "The reason is self-evident:" when an alien does not demonstrate that he or she has made good faith efforts to assist with securing travel documents necessary to effectuate his or her removal, the alien, once detained, "cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock." *Pelich v. I.N.S.*, 329 F.3d 1057, 1060 (9th Cir. 2003). Accordingly, "*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal." *U.S. ex rel. Kovalev v. Ashcroft*, 71 F. App'x 919, 924 (3d Cir. 2003) (quoting *Pelich*, 329 F.3d at 1060). Such is the case here. For the reasons above, assuming the Court finds habeas jurisdiction, the Court should dismiss the *Zadvydas* claim on the merits.[5]

iii. The APA and Due Process Claims Also Fail

Petitioner challenges his detention for the purpose of executing the final removal order to an alternate country. Petitioner alleges that his "continued detention without an individualized assessment is arbitrary and capricious… because there is no evidence that Respondents found Petitioner to be a danger or a flight risk, or that he had travel documents, the decision to continue detaining him violates DHS's own regulations." ECF No. 1-1, p. 9:1-4. Petitioner's APA or due process claims fail as a matter of law.

1. Petitioner's Detention Does Not Violate Statute or Regulation

Petitioner claims that his detention was "contrary to ICE's longstanding policy" regarding removal to third countries which Petitioner claims is "unconstitutional and in violation of the INA…" ECF No. 1-1, p. 9:9-12. Besides these baseless allegations, Petitioner does not identify any statutory or regulatory provision that his detention pending his removal to either Azerbaijan or Armenia violated. Instead, Petitioner cites generally to 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4. *Id.*, pp. 7-8. The former allows for detention of aliens who are removable due to aggravated felony or deemed a risk to the community or

[5] The *Zadvydas* claim is not subject to the jurisdiction-stripping provisions discussed above. *See Tazu*, 975 F.3d at 299. Accordingly, Respondents seek dismissal of Count I for lack of habeas jurisdiction and on the merits, but not based on § 1252.

unlikely to comply with removal orders, while the latter provision provides minimum statutory requirements for conditions of supervised release pending removal and sets out the regulatory requirements for a continued detention of aliens beyond the removal period. Neither is applicable in Petitioner's case.

2. Petitioner's Detention Complies with Due Process

The same conclusion applies as to the Petitioner's due process challenge. The basic elements of due process are notice and an opportunity to be heard. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Here, Petitioner had a removal order from an Immigration Judge issued on December 8, 2003. Exhibit A. Petitioner failed to appeal such order, and such order became final in January of 2004. After ninety days of mandatory detention, Petitioner was released with the conditions that he needed in good faith to reach out to embassies and consulates to obtain travel documents for his removal and provide written proof of such efforts. Petitioner failed to do so for 12 years. In the meantime, he also got convicted on June 14, 2023, and served a prison sentence for possession with intent to distribute meth. After he served his sentence, the Petitioner was arrested pursuant to a final removal order. During his current detention, he filed for a Deferral of Removal under the Convention Against Torture, which was granted on August 21, 2025, ordering his removal to Azerbaijan or Armenia. Exhibit C. Petitioner had until September 21, 2025, to appeal that order and to raise challenges of his removal to one of these two countries. Petitioner waived an appeal. *Id.* Thus, the order became final on September 21, 2025.

No where in his Petition, Petitioner alleges that he made efforts to obtain a travel document or provide ICE with written requests for travel documents or acceptance letters from alternate countries, once he had a final order of removal. None of this amounts to a violation of due process.

3. Any Due Process Claim Regarding Third Country Removal Fails

To the extent that Petitioner presses an additional due process claim based on the absence of any present indication of supposed third country removal efforts that claim fails as well. A procedural due process claim, as noted above, has two elements: (1) notice, and (2)

an opportunity to be heard. *See Mathews*, 424 U.S. at 333. And here, Petitioner has not demonstrated he has been deprived of these requirements. After Petitioner served his criminal conviction, he was detained by ICE. He has been in detention since May 3, 2025. During his current detention, Petitioner filed for a Deferral of Removal under the Convention Against Torture and appeared before an Immigration Judge. Exhibit C. The Immigration Judge granted Petitioner's deferral of removal on August 21, 2025, ordering his removal to Azerbaijan or Armenia. *Id.* Petitioner had until September 21, 2025, to appeal that order and to challenge the removal to these two countries. Petitioner waived an appeal. *Id.* Thus, the order became final on September 21, 2025. DHS and the State Department are working diligently in obtaining travel documents to either one of these two countries, and thus it is reasonably foreseeable that a removal of the Petitioner will occur within the reasonably foreseeable future.

V. Conclusion

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted this 2nd day of January 2026.

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