IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BASHIR JAMA ISSE, Petitioner, v. KEVIN RAYCRAFT, Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, Department of Homeland Security, Respondent.	Case No. 1:25-cv-00872 District Judge Jeffery P. Hopkins Magistrate Judge Peter B. Silvain, Jr.

RETURN OF WRIT

Petitioner, Bashir Jama Isse, is lawfully detained pursuant to 8 U.S.C § 1231(a) and this Court cannot enjoin action taken to remove Petitioner from the United States. As such, this Court should deny and dismiss the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. (Petition, ECF 1.) Petitioner has raised no issues subject to judicial review, pled no facts inconsistent with due process, and cannot demonstrate his removal will not happen in the reasonably foreseeable future. Nor has Petitioner demonstrated that this Court can grant any relief requested. Therefore, this Court should deny and dismiss the petition pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

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I. FACTUAL BACKGROUND

Petitioner, Bashir Jama Isse ("Petitioner" or "Isse"), brings this action as a petition for habeas corpus under 28 U.S.C. § 2241. (Petition, ECF 1, PageID 1.) Isse is a 36-year-old native and citizen of Ethiopia (ethnic Somali) and claims he entered the United States on or about September 22, 2015 at the Hidalgo, Texas point of entry. (*Id.* PageID 1-2; Declaration of Stephani L. Parker, Ex. A, at 1-2, ¶¶2, 4; Birth Certificate, ECF 1-2, PageID 11; Interview, ECF 1-4, PageID 13-14.)

Petitioner was found inadmissible, arrested, and processed for Expedited Removal, then served with an Expedited Removal Order. (Petition, ECF 1, PageID 2; Parker Decl., Ex. A, at 2, ¶4.) He claimed a fear and was referred to the asylum office for a credible fear interview. After a finding of a credible fear of persecution, the asylum office issued a Notice to Appear and the Petitioner was placed in removal proceedings before the Lumpkin, Georgia Immigration Court. (Petition, ECF 1, PageID 2; Parker Decl., Ex. A, at 2, ¶¶5-7; NTA, ECF 1-3, PageID 12; Interview, ECF 1-4, PageID 13-21; I-589, Application for Asylum, ECF 1-5, PageID 22-33; NTA, Ex. B.) In removal proceedings, Petitioner filed, then withdrew his application for asylum and withholding of removal and requested a removal order. (Petition, ECF 1, PageID 2; Parker Decl., Ex. A, at 2, ¶¶5-10; Nov. 17, 2015 Immigration Judge Order, ECF 1-6, PageID 34; 2015 Removal Order, Ex. C.)

On November 17, 2015, he was ordered removed from the United States to Somalia, and subsequently, released on supervision on February 22, 2016. (Petition, ECF 1, PageID 2; Parker Decl., Ex. A, at 2-3, ¶¶9-11.) There is no evidence Petitioner appealed his removal order. He filed a motion to reopen in May 2019 but it was denied

that same year. (Parker Decl., Ex. A, at 3, ¶13; Motion to Reopen Denial 1, Ex. D.)

On May 21, 2025, Petitioner's supervision was revoked and he was taken into custody pending his order of removal to Ethiopia. (Petition, ECF 1, PageID 3; Parker Decl., Ex. A, at 3, ¶14; Revocation, Ex. G.) He was detained at Butler County Correctional Complex. (*Id.*)

On June 6, 2025, ICE requested the Petitioner assist in his removal by completing travel document applications, but he refused to do so. (Parker Decl., Ex. A, at 3, ¶15.)

The Petitioner filed another motion to reopen on June 9, 2025 (Petition, ECF 1, PageID 3; Parker Decl., Ex. A, at 3, ¶16.) The Immigration Court issued a stay of his removal. (*Id.*) On August 1, 2025, the Petitioner's motion to reopen was denied for several reasons and the stay of removal was lifted. (Motion to Reopen Denial 2, Ex. E; Aug. 1, 2025 IJ Order, ECF 1-13, PageID 49-51; Petition, ECF 1, PageID 3; Parker Decl., Ex. A, at 3, ¶17.) Petitioner did not appeal. (Parker Decl., Ex. A, at 3, ¶17.)

On September 5, 2025, ICE ERO attempted to provide Isse with travel document applications for completion. However, Petitioner again refused to complete the applications. (*Id.* at ¶18.)

On September 10, 2025, a Travel Document Request for Petitioner was provided to an ICE Removal and International Operations Officer ("RIO"). (*Id.* at 4, at ¶19.) On or about the same day, Petitioner was warned of the consequences for failure to depart and instructed on how to comply with effecting his removal. (I-229a,

Ex. F, at 1-2.) He was also given notice of a custody review determination on September 18, 2025. (*Id.* at 3-5.)

A Post Order Custody Review was completed by ICE on December 10, 2025. (*Id.* at ¶20.) That same day, Petitioner finally completed a travel document application for Ethiopia. (*Id.* at ¶21.) The completed travel document application was provided to the RIO officer on December 18, 2025. (*Id.* at ¶22.)

There are no known institutional barriers preventing ICE from obtaining a travel document from Ethiopia for the Petitioner. (*Id.* at ¶23.) Individuals have been removed from the United States to Ethiopia and is nothing indicates Petitioner cannot be removed after a travel document is received. (*Id.* at ¶24.) There are no known institutional barriers preventing ICE from removing Petitioner to Ethiopia in the reasonably foreseeable future. (*Id.* at ¶25.)

Petitioner filed this Petition on November 26, 2025, alleging that he has been unlawfully taken into custody and detained, in violation of the Due Process Clause of Fifth Amendment to the United States Constitution, and the Immigration and Nationality Act ("INA") § 241(a), 8 U.S.C. § 1231(a). (Petition, ECF 1, PageID 3-6.)

Petitioner seeks declaratory and injunctive relief, release from custody (returned to supervision), and attorney's fees. (*Id.* at PageID 7, ¶¶1-6.)

II. LEGAL AND STATUTORY BACKGROUND

"The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). "If the immigration judge decides that the alien is

inadmissible or deportable and that the alien is not entitled to any of the relief or protection that he requested, the immigration judge will issue an order of removal." *Id.* at 528 (citing 8 U.S.C. § 1229a(c)(5)).

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

The statute referring to a 90-day removal period, 8 U.S.C. § 1231(a)(1)(A), holds: "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')." *Martinez v. Larose*, 968 F.3d 555, 559 (6th Cir. 2020).

"The removal period is defined as beginning on the latest of three events: (1) "[t]he date the order of removal becomes administratively final"; (2) "[i]f 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"; or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* at 559–60 (citing 8 U.S.C. § 1231(a)(1)(B)).

Regarding detaining an alien beyond the 90-day period, 8 U.S.C. § 1231(a)(6) states:

> An 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).

"§ 1231(a)(3) allows for supervised release after the 90-day removal period expires '[i]f the alien does not leave or is not removed' during that time period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021).

Once the 90-day removal period has elapsed, the alien becomes subject to 8 U.S.C. § 1231(a)(6) which makes detention discretionary. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 639 (D. Mass. 2018). "Continued detention under this provision creates the 'post-removal-period.'" *Id.* "[I]n enacting § 1231, Congress and the President anticipated that not all aliens ordered removed would be deported during the removal period. *See* § 1231(a)(3) (referring to 'an alien' who 'does not leave ... within the removal period')." *Jimenez v. Cronen*, 317 F. Supp. 3d at 651. Thus, 8 U.S.C. § 1231 expressly anticipates revocation of supervision and detention beyond the 90-day removal period.

III. LAW AND ARGUMENT

Petitioner seeks declaratory relief and release from detention. (Petition, ECF 1, PageID 7.) Despite having a valid final order of removal, he argues that his detention is not authorized because his final order expired. (*Id.* at PageID 5.) Petitioner concedes individuals may be detained beyond the removal period pursuant to 8 U.S.C. § 1231(a)(6), if they are unlikely to comply with the order of removal, found to be a risk to the community, or likely to be removed in the reasonably foreseeable future. (*Id.*) He claims that because the initial 90-day removal period expired, and

his detention is past the six-month presumptively reasonable period, that his detention has become indefinite. (*Id.* at PageID 5-6.)

Petitioner relies on the INA and the Fifth Amendment's Due Process Clause of the U.S. Constitution. (*Id.*); 8 U.S.C. § 1231(a)(6).

Petitioner's claims fail. Petitioner is really asking this Court to delay and to stop his removal, which this Court has no jurisdiction to do. Thus, the Court should deny and dismiss his Petition.

IV. STANDARD OF REVIEW

This Court should begin its analysis with the threshold issue of "whether this the Court has subject matter jurisdiction." *See e.g., Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586 (N.D. Ohio Aug. 7, 2025) (citing *Karki v. Jones*, Case No. 1:25-cv-281, 2025 WL 1638070, at *3 (S.D. Ohio June 9, 2025) ("The fundamental question of subject matter jurisdiction must precede any analysis of the merits on this matter.").

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts are courts with limited jurisdiction and may only hear cases that are "authorized by Constitution and statute." *Id.* If at any time, the court determines that it lacks subject-matter jurisdiction, that court must dismiss the action in front of them. *Mich. Emp't Sec. Comm'n v. Wolverine Radio Co.*, 930 F.2d 1132 (6th Cir. 1991).

The requirement that a plaintiff establish subject-matter jurisdiction "as a threshold matter 'spring[s] from the nature and limits of the judicial power of the

United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (some internal quotation marks omitted).

A motion under Fed. R. Civ. P. 12(b)(1) can raise facial or factual attacks. *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025). Regardless of which attack is used, the plaintiff bears the burden of persuading the Court that subject matter jurisdiction exists. *Dismas Charities, Inc. v. U.S. Dep't of Justice*, 401 F.3d 666, 671 (6th Cir. 2005).

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests whether that plaintiff has pleaded a cognizable claim in his or her complaint. "To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F.3d 315, 319 (6th Cir. 1999) (internal quotation omitted).

A court should dismiss a claim under Rule 12(b)(6) when the plaintiff has failed to plead sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff [has pleaded] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). A complaint need not contain detailed factual allegations but must raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555.

The Court should deny the Petition because this Court lacks subject-matter jurisdiction over his claims because 8 U.S.C. § 1252, *et seq.*, precludes the review. Even if the Court had jurisdiction, Petitioner still fails to plead plausible claims for relief.

V. THIS COURT LACKS JURISDICTION

A. This Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252

In reality, Petitioner's challenge to his detention, challenges the execution of his final removal to Ethiopia. The Court lacks jurisdiction to hear a challenge to Petitioner's removal under 8 U.S.C. § 1252. As such, this Court should deny the Petition and dismiss this action for lack of subject matter jurisdiction. In enacting the REAL ID Act, Congress limited the jurisdiction of federal courts through 8 U.S.C. § 1252(g) as follows:

> Except 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.

8 U.S.C. § 1252(g) (emphasis added). "In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order." *Rranxburgaj v. Wolf,* 825 F. App'x 278, 283 (6th Cir. 2020). This holds true "whether or not [federal courts] agree with ICE's decision to execute [a petitioner's] removal order." *Id.*

These types of claims are barred under 8 U.S.C. §1252(g). This statute bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 482 (1999).

The Sixth Circuit, and including other Courts of Appeals, have consistently held that similar petitioners' challenges to removal are barred by § 1252(g). *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *see also Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 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."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021)

(rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS's legal authority as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen., U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Title 8 U.S.C. § 1252(g) therefore limits jurisdiction as it relates to claims arising from such execution of removal orders—even if federal question jurisdiction would otherwise be proper. *See Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010). By its terms, this statutory limitation also applies to habeas relief under 28 U.S.C. § 2241, which would typically provide jurisdiction over cases where an alien is held in custody in violation of the Constitution or the laws of the United States. *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001).

Petitioner was lawfully arrested and detained in order to execute his valid final order of removal. (Parker Decl., at 3, ¶¶13-14; Revocation, Ex. G, at 1.) Because Petitioner challenges the continued decision to detain him for the enforce his removal order, (Petition, ECF 1, PageID 5); *Grigorian v. Bondi,* Case No. 25-cv-22914, 2025 WL 1895479, *4 (S.D. Fla July 8, 2025) (distinguishing between challenge to ICE decision or action to detain in furtherance of execution of removal order versus

challenge to "underlying legal bases" of those decisions or actions), the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition.

A habeas petition is proper where it "challenged only the government's failure to give notice and the due process implications of the undocumented petitioner's arrest and detention, and because the petition did not address the merits of the underlying order of removal," *Kellici v. Gonzalez*, 472 F.3d 416,419-20 (6th Cir. 2006). The petitioner in the *Kellici* decision, did not receive notice of an "Order to Appear," and the habeas petition was related solely to the government's failure to provide him notice of the "Order to Appear," at his removal hearing. *Id.* at 417. In fact, *Kellici's* petition did not mention his final order of removal. *Id.*

However, the Petitioner here is not seeking to remedy any lack of notice for his removal hearing. Petition, ECF 3-6.) Petitioner claims his "prolonged and unjustified detention pending removal is unlawful," (Petition, ECF 1, PageID 3, 4-6), and that ICE's decision to detain violates the INA and Due Process Clause. (*Id.*)

An order of supervision may be revoked and a non-citizen may be detained beyond the removal period if, "(3) it is appropriate to enforce a removal order . . . ." 8 C.F.R. §241.4(l)(2)(iii). Petitioner "was taken into custody based on his final order of removal." (Parker Decl., at 3, ¶¶13-14; Revocation, Ex. G.)

Unlike the petitioner in *Kellici* decision, Petitioner Isse claims that because he was not deported 90 days after his removal order, his continued "prolonged and unjustified detention" for execution of his removal order, is illegal and contrary to Due Process. (Petition, ECF 1, PageID 3-6.) Petitioner is really contesting ICE's

decisions and actions to execute his valid, final order of removal. Petitioner fails to state a claim pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). Indeed, Petitioner's complaints relate directly to his final order of removal. As a result, the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition.

B. Sections 1252(a)(5) and (b)(9) Bar Review of Petitioner's Claims.

This Court also lacks jurisdiction over Petitioner's claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

> Judicial 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.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal . . . ."

In relation to section 1252(a)(9), the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, at *5 (S.D. Ohio Jan. 3, 2017). In fact, the First

Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

Petitioner sought twice to reopen his removal order pursuant to the administrative process, but it was denied both times. (Petition, ECF 1, PageID 3; Parker Decl., Ex. A, at 3, ¶¶13, 16-17; Motion to Reopen Denial 1, Ex. D; Motion to Reopen Denial 2, Ex. E.) He could seek an emergency stay of removal as a part of the administrative process. *See generally* 8 C.F.R. § 1003.2(f), 1003.23(b)(v). However, because Petitioner's requested relief arises from an "action taken . . . brought to remove" Petitioner "from the United States" and is a petition for habeas corpus, this court lacks jurisdiction. § 1252(b)(9).

Thus, to obtain habeas relief, Petitioner must not merely show that he is "in custody," but rather that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n.3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'" quoting 28 U.S.C. § 2254(a)). Petitioner cannot meet this burden because he is lawfully detained. Therefore, this Court lacks jurisdiction to consider Petitioner's challenge to his detention and pending removal. *See, e.g, Touray v. Lynch,* No. 1:25-cv-683, 2025 WL 2778271, at *3 (S.D. Ohio Sept. 30, 2025). Thus, the Petition should be denied and dismissed.

VI. PETITIONER'S DETENTION PENDING REMOVAL IS LAWFUL

A. There is No Time Limit on Enforcing Petitioner's Order of Removal.

Petitioner does not contest the fact that he has a valid removal order. He also does not contest that he is inadmissible under 8 U.S.C. § 1182. He claims that because the Respondent released him on supervision after the initial 90-day removal period following the date the order became final, and that his detention is unjustified and prolonged in violation of the INA and Due Process Clause of the Fifth Amendment. (Petition, ECF 1, PageID 3, 4-6.) Detaining Petitioner to enforce his removal does not violate the Fifth Amendment or the INA as his removal is significantly likely to occur in the reasonably foreseeable future. (Parker Decl., Ex. A, at 3-4, ¶¶19-25.) In fact, any delay in obtaining travel documents from Ethiopia is attributable to the Petitioner for refusing to complete the travel document applications on at least two occasions. (*Id.* at 3-4, ¶¶15, 18-19, 21-22.) Specifically, the Petitioner refused to complete the travel document applications on June 6, 2025 and September 5, 2025. (*Id.* at ¶¶15, 18.) It was not until December 10, 2025, that the Petitioner completed the travel document application for Ethiopia. (*Id.* at ¶21.)

There is no question that ICE has authority to detain Petitioner during the removal process. "Detention during removal proceedings is a constitutionally permissible part of [the removal] process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

Moreover, immigration officials retain discretion not to execute a final order of removal within 90 days. *Arizona v. Biden*, 40 F.4th 375, 391 (6th Cir. 2022). "Immigration authorities, as the Supreme Court has made clear, have considerable

discretion over whom to arrest and remove." *Id.* (citing *Arizona v. U.S.*, 567 U.S. 387, 396 (2012)). Just because immigration authorities did not remove Petitioner within 90 days of his removal order, does not mean they cannot remove him now. His final order of removal remains valid.

In similar recent cases, district courts have agreed. *See Touray v. Lynch,* No. 1:25-cv-683, 2025 WL 2778271, at *3 (S.D. Ohio Sept. 30, 2025) (no jurisdiction to review challenges to detention for removal and denying TRO because no likelihood of success under *Zadvydas*) ; *Ghamelian v. Baker*, No. 25-02106, 2025 WL 2049981, at *1 (D. Md. July 22, 2025) (neither language of 8 U.S.C. § 1231(a)(6) nor *Zadvydas* supports notion that government's ability to detain alien expired years ago); *see also Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586, at *5, *11 (N.D. Ohio Aug. 7, 2025) (recognizing "requests for travel documents support finding of reasonably foreseeable removal.").

Petitioner claims that the language in 8 U.S.C. § 1231(a)(1)(A) limits the removal period to 90 days. (Petition, ECF 1, PageID 5.) § 1231(a)(1)(A) provides that, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." The Sixth Circuit addressed this issue and explained:

> "Except as otherwise provided," it says that, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." *Id.* But Congress itself appreciated that removal would not always occur within 90 days. It permitted supervised release—release from custody—"[i]f the alien does not leave or is not removed within the removal period." *Id.* § 1231(a)(3). Combined with the basic principle that "[a]t each stage" of the removal process, "the Executive has discretion to abandon the endeavor" to remove

> someone, *Reno*, 525 U.S. at 483, 119 S.Ct. 936, *all of this means that immigration officials retain some discretion not to execute a final order of removal within 90 days.*

Arizona, 40 F.4th at 391 (emphasis added). Indeed, "the use of 'shall' does not automatically create a judicially enforceable mandate, especially when criminal or civil law enforcement is at issue." *Id.* citing *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 761–62, (2005). The Petitioner relies upon *Zadyvdas v. Davis*, 533 U.S. 678, 689-90 (2001), and the statutory language in support of his Petition. (Petition, ECF 1, PageID 4, 3-6.)

In keeping with the discretion afforded in 8 U.S.C. § 1231(a)(3), ICE placed Petitioner on supervision in February 2016. (Petition, ECF 1, PageID 4, ¶14; Parker Decl., Ex. A, at 2, ¶12.) DHS regulations later permitted ICE to detain Petitioner in order to effectuate his removal. *See* 8 C.F.R. § 241.4. Addressing the procedure of revocation of release after the removal period, § 241.4(l)(2)(iii), states: "Release may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . [i]t is appropriate to enforce a removal order . . ." 8 C.F.R. § 241.4(l)(2)(iii). That is precisely what happened here. ICE is enforcing the removal order for Petitioner to return to his home country, Ethiopia. (Parker Decl., Ex. A, at 1, 3, ¶¶2, 14-15; Revocation, Ex. G.) Although Petitioner Isse was ordered removed to Somalia in 2015, he is a citizen of Ethiopia, or a Somali Ethiopian. (Removal Order, Ex. C; Petition, ECF 1, PageID 1-2; Birth Certificate, ECF 1-2, PageID 11; Interview, ECF 1-4, PageID 13-14.) Because he is citizen of Ethiopia, he may be removed to Ethiopia. *See* 8 U.S.C. § 1231(b)(1)(C) and (b)(2)(D)-(E).

The Supreme Court's decision in *Zadvydas v. Davis* does not create a time limitation to Isse's Removal Order. *See* 533 U.S. 678 (2001). There is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. (Parker Decl., Ex. A, at 3-4 ¶¶19-25.) Indeed, "[w]hen a removal is foreseeable, detention does not violate due process as set out in *Zadvydas* . . . ." *Martinez v. Larose*, 968 F.3d 555, 557 (6th Cir. 2020).

Petitioner's short detention prior to his removal does not violate due process because *Zadvydas* analysis only applies, in cases unlike this one, where there is a "danger of indefinite detention [with] no significant likelihood of removal in the reasonably foreseeable future." *Jiang Lu v. U.S. ICE*, 22 F.Supp.3d 839, 843 (N.D. Ohio 2014); *Zadyvdas v. Davis*, 533 U.S. 678, 689-90 (2001). Because Petitioner's removal to Ethiopia is significantly likely to occur in the reasonably foreseeable future, *Zadvydas* does not apply. Moreover, as further explained below, Petitioner has not provided a good reason to believe he will not be removed in the reasonably foreseeable future. As a result, Petitioner's detention cannot violate the Constitution or laws or treaties of the United States.

B. Petitioner's Continued Detention to Execute His Removal Order is Constitutional.

As ICE ERO is actively working to remove Petitioner to Ethiopia, he is not in indefinite and potentially permanent detention. In *Zadvydas v. Davis*, the Supreme Court interpreted Section 1231(a)(6), the provision that allows for detention beyond the removal period, to limit post-removal-period detention to a period "reasonably necessary to bring about the alien's removal from the United States." 533 U.S. 678,

689 (2001). The Court held that post-removal-order detention for six months is "presumptively reasonable." *Id.* at 701. Continued detention beyond six months is not authorized by statute, if removal is no longer reasonably foreseeable. *Id.* at 699.

Importantly, the burden is on the petitioner to show that his removal is unlikely, as an alien may be detained beyond six months unless the "alien provides good reason to conclude there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future in a habeas corpus petition, the government must respond with evidence sufficient to rebut that showing. *Id.*

In *Zadvydas*, the Court emphasized that the "basic purpose" of immigration detention is "assuring the alien's presence at removal" and concluded this purpose was not served by the continued detention of aliens whose removal was not "reasonably foreseeable." *Id.* at 699. Removal was not reasonably foreseeable in the *Zadvydas* decision because no country would accept the deportees or the United States lacked an extradition treaty with their receiving countries. *Id.*

Even so, the Supreme Court does not require the government to release every alien who has been in detention for more than six months. To the contrary, in *Zadvydas*, the Court held:

> 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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink.

> **This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.**

Id. at 701 (emphasis added).

Similarly, in *Clark v. Martinez*, an alien's removal to Cuba was not reasonably foreseeable when the government conceded "that it is no longer even involved in repatriation negotiations with Cuba." 543 U.S. 371, 386 (2005). In both the *Zadvydas* and *Clark* decisions, the Court recognized that the government's purported interest in detaining an alien was severely diminished when there is no significant likelihood that the alien could be removed. *See Demore v. Kim*, 538 U.S. 510, 527 & n.10 (2003) (observing that detentions at issue in *Zadvydas* did not serve a feasible immigration purpose). The "indefinite and potentially permanent" civil detention of such an alien would clearly pose serious substantive due process concerns. *Zadvydas*, 533 U.S. at 696. Because Congress did not clearly intend "to authorize long-term detention of unremovable aliens," however, the Court held that this constitutional threat could be avoided by construing the statute as not authorizing detention once removal is no longer reasonably foreseeable. *Id.* at 697-99.

To state a claim under *Zadvydas*, the alien not only must show post-removal order detention in excess of six months, but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 701. To meet this burden under the second prong, an alien's claim must be supported by more than mere "conclusory statements." *Djokic*

v. Holder, 2011 WL 5599409, at *1 (E.D. Mich. Nov. 17, 2011); *see also Idowu v. Ridge*, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003) (stating alien must put forward more than "speculation and conjecture"). To shift the burden to the government, an alien must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future. *Idowu*, 2003 WL 21805198, at *4. Where the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Zadvydas*, 533 U.S. at 701; *see also Djokic*, 2011 WL 5599409, at *1.

In Petitioner's case, ICE determined that Petitioner is inadmissible under 8 U.S.C. § 1182. Petitioner's inadmissibility under Section 1182 permits his detention pending removal pursuant to 8 U.S.C. § 1231(a)(6). ICE ERO is currently working to secure appropriate travel documents from Ethiopia. (Parker Decl., Ex. A, at 3-4, ¶¶15-18-19, 21-22.) Ethiopia has not rejected the request for travel documents for Petitioner, and there is no known reason that Ethiopia is unlikely to provide a travel document for Petitioner.

In fact, a travel document is not required for ICE to demonstrate that a petitioner's removal is significantly likely to occur in the reasonably foreseeable future under *Zadvydas*.

For example, judges of this district to consider the issue, have repeatedly observed that, "mere delay by the foreign government in issuing travel documents, despite reasonable efforts by United States authorities to secure them, does not

satisfy a detainee's burden under *Zadvydas* to provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See e.g., Boachie-Danquah v. U.S. Att'y Gen.*, No. 1:17-cv-641, 2018 WL 868769 (S.D. Ohio Feb. 14, 2018) (Bowman, Mag. J.), *rept. and recomm. adopted*, 2018 WL 4031062 (Aug. 23, 2018) (Black, J.) (habeas petition relying on *Zadvydas* denied where only impediment to removal is the *future* issuance of travel documentation) (emphasis added) (quoting *Estenor v. Holder*, No. 1:11–cv–743, 2011 WL 5572596, at *3 (W.D. Mich. Oct. 24, 2011), *rept. and recomm. adopted*, 2011 WL 5589279 (Nov. 16, 2011); *see also Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905 (S.D. Ohio April 1, 2019) (Bowman, M.J.), *rept. and recomm. adopted*, 2020 WL 728273 (Feb. 13, 2020) (Black, J.); *Al Rawahna v. Att'y Gen. of the United States*, No. 1:18-cv-175, 2018 WL 3023438 (S.D. Ohio June 18, 2018) (Litkovitz, M.J.), *rept. and recomm. adopted*, 2018 WL 3348993 (Jul. 9, 2018) (Barrett, J.); *Mohamed v. U.S. Att'y Gen.*, No. 1:17-cv-573, 2018 WL 1904293 (S.D. Ohio Mar. 8, 2018) (Bowman, M.J.), *rept. and recomm. adopted*, 2018 WL 1901801 (Apr. 20, 2018) (Dlott, J.); *Ahmad v. U.S. Att'y Gen.*, No. 1:17-cv-359, 2017 WL 4271704 (S.D. Ohio Aug. 29, 2017) (Bowman, M.J.), *rept. and recomm. adopted*, 2017 WL 4250526 (Sept. 22, 2017) (Dlott, J.); *Yahya v. Att'y Gen.*, No. 1:17-cv-1021; 1:17-cv-1073, 2018 WL 3145172 (S.D. Ohio Jun. 27, 2017) (Vascura, M.J.), *rept. and recomm. adopted*, 2018 WL 3496412 (Jul. 20, 2017) (Marbley, J.); *Ali v. Lynch*, No. 1:16-cv-1182, 2017 WL 1535116 (S.D. Ohio Apr. 27, 2017) (Litkovitz, M.J.), *rept. and recomm. adopted*, 2017 WL 2191047 (May 17, 2017) (Barrett, J.); *Mahad-Mire v. United States Att'y, Gen.*, No. 1:16-CV-921, 2017 WL 124362, at *2

(S.D. Ohio Jan. 12, 2017) (Litkovitz, M.J.), *rept. and recomm. adopted sub nom*, 2017 WL 773638 (S.D. Ohio Feb. 27, 2017) (Black, J.).

This case is distinguishable from *Zadvydas* and *Clark* because Petitioner is an alien who can be lawfully removed. Although his removal has not been carried out within 180 days of his detention, the delay does not make his removal impossible. ICE is pursuing a viable pathway to complete Petitioner's removal. Petitioner remains capable of being removed and the government retains a valid interest in "assuring [his] presence at removal." *See Zadvydas*, 533 U.S. at 699. As such, his detention is not indefinite and remains authorized by § 1231(a)(6).

Furthermore, Petitioner is not stuck in a "removable-but-unremovable limbo," as were the petitioners in *Zadvydas*. *See Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 347 (2005) (describing the class of aliens presumptively requiring release under case law). There is no indication that Ethiopia will refuse or has refused to accept Petitioner, and efforts to remove Petitioner continue. (Parker Decl., Ex. A, at 3-4 ¶¶19-25.) Accordingly, Petitioner's conclusory allegation that his removal is not significantly likely to occur in the foreseeable future lacks merit. Petitioner's detention is not indefinite and his ultimate removal is reasonably foreseeable. In fact, Petitioner himself caused a six-month delay in submitting a travel document application to the Ethiopian Consulate for his removal. (*Id.* at ¶¶15, 18-22.) Refusal to cooperate in securing his removal, permits ICE to detain an alien beyond the six-month period presumptively reasonable period established by the Supreme Court in *Zadvydas*. *See e.g., Al Rawahna*, 2018 WL 3023438, at *3-*4;

(petitioner refusal to board airplane to Jordan) (citing cases); *see also Mohamed*, 2018 WL 1904293, *3-*4 (petitioner refusal to board aircraft to Senegal) (citing cases); *Kanu v. Sheriff Butler County*, No. 1:16-cv-756, 2016 WL 6601565 (S.D. Ohio Nov. 7, 2016) (Litkovitz, M.J.), *rept. and recomm. adopted*, 2017 WL 25537 (Jan. 3, 2017) (Black, J.) (petitioner refusal to sign and fingerprint travel document prevented removal via aircraft to Sierra Leone) (citing cases). Where an alien intentionally prevents ICE from effecting removal, courts have "tolled or suspended" the removal period or refused to find a constitutional violation. *See Al Rawahna*, 2018 WL 3023438, at *3 (citing cases).

Petitioner's claims are without merit. He claims that he has been detained beyond the six-month presumptively reasonable period under *Zadvydas*, without sufficient explanation. (Petition, ECF 1, PageID 5.) He further claims that he is not likely to be removed to Ethiopia in the reasonably foreseeable future because "(1) no country will accept him; (2) his country of origin refuses to issue his travel documents; (3) his country of origin and the United States have no removal agreement; or (4) his country of origin is asked to provide his travel documents, and several months then without a definitive answer from that country." (Petition, ECF 1, PageID 6) (citing *Nma v. Ridge*, 286 F.Supp.2d 469, 475 (E.D. Pa. 2003) (listing four case types where courts found "no significant likelihood of removal").

In support of that assertion, Petitioner asserts that the six-month period has run without his removal, he has not been informed of any progress from the Ethiopian Consulate, no third country will accept him, and the Government has failed to remove

him for over six-months with "his full cooperation and assistance." (Petition, ECF 1, PageID 6.)

Petitioner does not allege that Ethiopia has refused his return, refused to issue travel documents to him, or asserted there is any other reason that is *specific to him* that would suggest that he cannot or will not be removed in the foreseeable future.

Petitioner has not provided a good reason to believe that his removal from the United States is not significantly likely to occur in the reasonably foreseeable future. In fact, he fails to establish any of the reasons listed by the *Nma v. Ridge* decision he cited in his Petition. (Petition, ECF 1, PageID 5-6) (citing *Nma v. Ridge*, 286 F.Supp.2d 469, 475 (E.D. Pa. 2003)).

Petitioner has provided no evidence that no country will accept him and only recently provided a travel document application for Ethiopia. As a result, he cannot demonstrate no country will accept him.

Petitioner also cannot demonstrate that Ethiopia refuses to issue a travel document for him because the travel document application for Ethiopia was just completed on December 10, 2025 and provided to the ICE RIO on December 18, 2025. Also, he has not made an assertion that the United States and Ethiopia do not have a removal agreement.

Further, Petitioner's claim that he cooperated with ICE to facilitate his removal is directly rebutted by ICE Deportation Officer Parker. (Parker Decl., Ex. A, at 3, ¶¶15, 18.) As such, he cannot demonstrate that Ethiopia was asked to provide his travel documents and several months have passed.

Specifically, he refused to complete travel document applications in June 2025 and September 2025. (*Id.* at ¶¶15, 18.) He only agreed to complete a travel document application for Ethiopia on December 10, 2025. (Parker Decl., Ex. A, at 4, ¶21.) Indeed, because the RIO officer did not receive his completed travel document application until December 18, 2025, (*Id.* at ¶22), the Ethiopian Consulate could not have received his request for a travel document until three weeks ago, at the earliest. This makes his claim that he has not been informed of any progress from the Ethiopian Consulate, irrelevant. Any delay in procuring an Ethiopian travel document for Petitioner is directly attributable to his own refusal to complete the travel document application for Ethiopia until December 10, 2025. This Petition should be denied on this basis alone.

Even under the test provided in his Petition, Petitioner fails to provide a reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future. (Petition, ECF 1, PageID 5-6.) Therefore, the Petitioner has failed to shift the burden to back to the Government to demonstrate he is significantly likely to be removed in the reasonably foreseeable future. Even if the burden was shifted, Petitioner will remain entitled to periodic administrative reviews of his status, and he may request additional reviews, as permitted by applicable law.

Consequently, this Court lacks subject matter jurisdiction, and the Petition should be denied and dismissed.

CONCLUSION

Therefore, the Petition must be denied and dismissed.

Respectfully submitted,

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