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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HOANG KIM TRAN,

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 and JOHN MATTOS, Warden, Nevada Southern Detention Center,

Respondents.

Case No. 2:25-cv-02397-APG-DJA

Federal Respondents' Response to Amended Petition (ECF No. 5)

Federal Respondents Pamela Bondi, Kristi Noem, Michael Bernacke and Todd Lyons ("Federal Respondents"), through undersigned counsel, hereby submit their Response to the Amended Petition filed by Hoang Kim Tran. ECF No. 5. The petition should be denied because Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6) and does not violate his due process rights. In addition, his detention is not unconstitutionally prolonged under the Supreme Court Decision, but rather reasonable pursuant to the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

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

/ / /

Respectfully submitted this 26th day of January 2026.

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney

/s/ Virginia T. Tomova
VIRGINIA T. TOMOVA
Assistant United States Attorney

Memorandum of Points and Authorities

Petitioner Tran's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6). And it is not unconstitutionally prolonged under the Supreme Court's decision in *Zadvydas*, 533 U.S. 678. Rather, the detention is "presumptively reasonable" under the Supreme Court's decision. *See id.* at 701. Petitioner, however, has not carried his burden of demonstrating there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Notwithstanding this precedent, Petitioner claims his detention is unconstitutionally indefinite because there is no reasonable prospect of removal in the reasonably foreseeable future to the country designated by the Immigration Judge, Vietnam. *See* Memorandum of Oral Decision by an Immigration Judge, attached as Exhibit A.

Petitioner is subject to a removal order, dated June 14, 2001, to Vietnam. On December 12, 1980, Petitioner was admitted into the United States as a lawful permanent resident, however due to his extensive criminal history, he no longer has any claims to a US lawful permanent residency. *See* Exhibit A; *see also* I-213, attached as Exhibit B. Petitioner did not appeal the IJ's order of removal, and such order became final on July 14, 2001. ECF No. 5, p. 3. Subsequently, on October 29, 2001, U.S. immigration officials released Petitioner on an Order of Supervision (OSUP). Exhibit B, p. 3. Based on ICE database records, Petitioner has been noncompliant with his release from immigration custody on several occasions. *Id.* He was last scheduled to report to an ICE Office on June 28, 2017, which he did not report on. *Id.* ICE classified Petitioner as an ICE absconder for OSUP non-reporting. *Id.* ERO Salt Lake City decided to remand Petitioner back into ICE custody

1 due to his most criminal arrest and convictions. From 1992 to 2021, Petitioner has had 17
2 convictions ranging from burglary, grand theft, conspiracy to commit crime, and possession
3 of explosive device, including MFG sale. Exhibit B. In addition, once in detention
4 Petitioner signed an instruction sheet regarding requirements to assist in his removal, which
5 he also violated by failing to contact the consulate or embassy of Vietnam to request and
6 facilitate his travel documents. *See* Instruction Sheet, attached as Exhibit C.

7 Since Petitioner has been in detention, ERO has submitted a formal request for travel
8 documents to Vietnamese Consul General and is awaiting the response regarding the status
9 of such travel documents. *See* Correspondence to Consul General at the Vietnamese
10 Consulate, attached as Exhibit D. Once these documents are received, the Petitioner will be
11 deported from the U.S. in compliance with the IJ's court order.

12 Petitioner now brings a petition for a writ of habeas corpus, seeking immediate
13 release. But the Court does not have jurisdiction over the petition, because 8 U.S.C. § 1252
14 bars review of his claims. And even if the Court had jurisdiction, the claims fail on the
15 merits. The procedures followed by DHS regarding Petitioner's supervised release,
16 revocation, and detention complied with the INA and relevant regulations Petitioner knew
17 that he was required to meet certain conditions and requirements, which he failed to do.
18 Instead, he pursued life of crime which resulted in 17 convictions and confinements. Exhibit
19 B. Contrary to Petitioner's arguments, the evidence demonstrates that DHS and ICE is
20 engaged in continuing and progressing efforts to effectuate his removal to Vietnam,
21 pursuant to his final removal order and they are waiting for Petitioner's travel documents.
22 Petitioner's assertions that ICE cannot effectuate his removal are speculative. DHS and ICE
23 also provided notice and opportunities for review to Petitioner by appealing the final order
24 of removal which he did not do. Petitioner had a hearing before an IJ, who ordered his
25 removal on June 14, 2001. Exhibit A. There is no violation of the Administrative Procedure
26 Act ("APA") or due process. The Court should dismiss the petition.
27
28

BACKGROUND

I. Petitioner's Immigration and Criminal History

Petitioner is a 52-year-old alien from Vietnam, subject to final removal order. Exhibits A. Petitioner has 17 criminal convictions (burglary, grand theft, possession of controlled substance, MFG sale, conspiracy to commit crime, receiving of stolen property, possession of burglary tools, and possession of explosive device) dating from November 16, 1992, to August 21, 2021, all of which with exception of one has resulted in confinements from 30 days to 6 years in prison. Exhibit B.

Petitioner is subject to a removal order, dated June 14, 2001, to Vietnam. On December 12, 1980, Petitioner was admitted into the United States as a lawful permanent resident, however due to his extensive criminal history, he no longer has any claims to a US lawful permanent residency. *See* Exhibit A; *see also* Exhibit B. Petitioner did not appeal the IJ's order of removal, and such order became final on July 14, 2001. ECF No. 5, p. 3. Subsequently, on October 29, 2001, U.S. immigration officials released Petitioner on an OSUP. Exhibit B, p. 3. Based on ICE database records, Petitioner has been noncompliant with his release from immigration custody on several occasions. *Id.* He was last scheduled to report to an ICE Office on June 28, 2017, which he did not report on. *Id.* ICE classified Petitioner as an ICE absconder for OSUP non-reporting. *Id.* ERO Salt Lake City decided to remand Petitioner back into ICE custody due to his most criminal arrest and convictions. From 1992 to 2021, Petitioner has had 17 convictions ranging from burglary, grand theft, conspiracy to commit crime, and possession of explosive device, including MFG sale. Exhibit B. In addition, once in detention Petitioner signed an instruction sheet regarding requirements to assist in his removal, which he also violated by failing to contact the consulate or embassy of Vietnam to request and facilitate his travel documents. *See* Exhibit C; *see also* Exhibit D.

Since Petitioner has been in detention, ERO has submitted a formal request for travel documents to Vietnamese Consul General and is awaiting the response regarding the status

of such travel documents. Exhibit D. Once these documents are received, the Petitioner will be deported from the U.S. in compliance with the IJ's court order.

II. Procedural History

Petitioner filed his petition on December 29, 2025, in which he raised procedural and substantive due process and APA violations regarding his detention. ECF No. 5, pp. 7-9. Federal Respondents submit this memorandum of law in response to the petition.

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*,

533 U.S. at 689. 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 an 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).

LEGAL ARGUMENT

I. The Court Lacks Jurisdiction Over the Petition

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 the recent revocation of his supervised release and 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 the revocation of supervised release and re-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

[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 of 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).

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]

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: the decision to revoke supervised release and re-detain him pending removal. 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. Atty. Gen.*, 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. §

[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 Enft*, 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).").

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. 975 F.3d at 299. Here, as in *Tazu*, Petitioner's claims challenge the government's decision to revoke supervised release and re-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. Exhibit A. 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. at 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

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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.

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 was detained for the 90-day removal period until his release on an order of supervision. Pursuant to a final removal order, he was detained on November 14, 2025, by DHS. *See* Warrant of Removal/Deportation, attached as Exhibit E; *see also* Warrant for Arrest of Alien, attached as Exhibit F. He now challenges his present detention, which began on November 14, 2025, when ICE revoked Petitioner's supervised release by serving him with a Warrant of Removal/Deportation. Exhibit E. That detention is lawful and presumptively reasonable under *Zadvydas*, as Petitioner has been detained for a little over two months. 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. 05-2386 (JAP), 2005 WL 2656677, at *3 (D.N.J. Oct. 17, 2005). Petitioner makes neither showing.

1. Petitioner Cannot Establish 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 to Vietnam. *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). On December 3, 2025, DHS has already submitted a formal request to the Vietnamese Consulate regarding the issuance of travel documents. Exhibit D. "Numerous courts … 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 an order of removal on June 14, 2001, which became final on July 14, 2001, Exhibit A. But he does not allege he made any attempt to cooperate in his removal in the more than 15 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 Order of Supervision and the INA. In fact, he engaged in life of crime consisting of criminal convictions and confinements of over two decades. 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. In fact, he has been noncompliant with his release from immigration custody on numerous occasions. Exhibit B. Indeed, his

extensive criminal history and failure to provide copies of travel document requests from alternate countries was the basis for the revocation of his supervision release. 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 "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. [4]

C. The APA and Due Process Claims Also Fail

Petitioner challenges ICE's revocation of supervised release for the purpose of executing the final removal order to Vietnam. Exhibit A. Petitioner claims that "after 4 1/2 years for (2) felony counts in the State of Nevada, Petitioner expired his prison term and he was pick up by ICE in Nov. 14, 2025 and have been in ICE custody since." ECF No. 5, p. 2. He also claims, "I was in ICE custody 2012, 2019 but was released under supervision

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[4] 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.

within hours." *Id.*, p. 4. Petitioner was found to be noncompliant with the requirements under the OCUP. The Court should dismiss Petitioner's APA and Due Process Claims as a matter of law.

1. *The Order of Supervision Did Not Violate Statute or Regulation*

Petitioner does not identify any statutory or regulatory provision that the order of supervision violated. Pursuant to the final removal order, Petitioner knew that he had to make good efforts to contact the Vietnamese Consulate or Embassy, which he did not do. On November 14, 2025, he was issued a Warning to Alien Ordered Removed or Deported and a Warning for Failure to Depart. *See* Warning to Alien Removed or Deported, attached as Exhibit G; *see also* Warning for Failure to Depart, attached as Exhibit H. On December 3, 2025, DHS has already submitted a formal request to the Vietnamese Consulate for travel documents and is awaiting the response regarding such travel documents. And 8 C.F.R. § 241.5(a)(2) specifically requires that an order of supervision "shall" include "[a] requirement that the alien continue efforts to obtain a travel document and assist [DHS] in obtaining a travel document." That is precisely what the order of supervision required here. Exhibit C. The Court should dismiss the APA claim.

2. *The Order of Supervision Comported with Due Process*

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 admits that he has been detained and released under supervision by ICE in 2012 and 2019. ECF No. 5, p. 4. Petitioner was found to be noncompliant with the requirements under the Order of Supervision and also failed to report to ICE as scheduled. Exhibit B, p. 3. He has not alleged any facts to demonstrate that he was denied an opportunity to be heard in connection with the order of supervision or instructions that governed his supervised release. As a matter of fact, Petitioner signed an acknowledgment of conditions of release under an order of supervision. Exhibit C. As detailed above, Petitioner was issued an order of removal on June 14, 2001, which became final on July 14, 2001. Exhibit A. Petitioner did not appeal that removal order. Following the 90-day mandatory removal period, ICE released Petitioner on an

1 order of supervision. It is plain that "ICE has the statutory and regulatory authority to
2 release persons with removal orders under an order of supervision." *See Desousa v. Garland*,
3 No. CV 21-3961, 2022 WL 1773604, at *3 (E.D. Pa. May 31, 2022). Petitioner also
4 received constitutionally adequate notice of the condition of release requiring that he make
5 good faith efforts to obtain travel documents. He signed an acknowledgment of the
6 conditions in the order of supervision. Exhibit C. After issuing the Order of Supervision,
7 ICE provided Petitioner with multiple documents that included written notice of the
8 conditions of release and penalties for noncompliance. *Id.* One penalty was revocation of
9 release. Petitioner then had multiple opportunities over the course of two decades years to
10 challenge the conditions of release, seek clarification, or comply with the order of
11 supervision. He did none of these things. And Petitioner had the opportunity to ask ICE for
12 clarification as to those conditions — and specifically, to ask for any additional information
13 related to the condition that he would make efforts to obtain travel documents. Instead,
14 petitioner led life of crime which resulted in 17 convictions and confinements. Exhibit B.
15 Petitioner did not allege that he or his attorney sought clarification at any point during the
16 24-year period he was on supervised release. Nor does Petitioner allege that he made efforts
17 to obtain a travel document or provide ICE with written requests for travel documents or
18 acceptance letters from alternate countries.

19 None of this amount to a due process violation. The INA authorizes supervised
20 release of aliens in Petitioner's shoes, *see* 8 U.S.C. § 1231(a)(3), and implementing
21 regulations require that the alien be subject to conditions of supervision which include the
22 very condition he challenges here: making efforts to obtain travel documents to facilitate
23 removal, *see* 8 C.F.R. § 241.5(a)(2). The condition of supervised release that required
24 Petitioner to make good faith efforts to secure travel documents to help secure his removal
25 fell "squarely within the parameters authorized by the statute and the regulations," and thus
26 fails to rise to a due process violation. *See Desousa*, 2022 WL 1773604, at *3. Petitioner is
27 lawfully detained subject to final removal order to Vietnam. He has been in detention for
28 two months, pending the receipt of his travel documents from the Vietnamese Consulate.

1 Clearly Petitioner's removal to Vietnam is in the reasonably foreseeable future. For these
2 reasons, the petition should be denied or in the alternative dismissed.

3 **CONCLUSION**

4 For the foregoing reasons, the Court should deny or in the alternative dismiss the
5 Amended Petition.

6 Respectfully submitted this 26th day of January 2026.

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9 First Assistant United States Attorney

10 */s/ Virginia T. Tomova*
VIRGINIA T. TOMOVA
11 Assistant United States Attorney

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