

NITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:25-cv-25666-FAM

SHAHER TAYSIR BARGHOUTH, I,

*Petitioner,*

v.

ASSISTANT FIELD OFFICE DIRECTOR,  
*et al.,*

*Respondents.*

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

Respondents,<sup>1</sup> through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 6], respond to the *Petition for Writ of Habeas Corpus* [DE 1] (the Petition).

**OVERVIEW**

Petitioner Shaher Taysir Barghouthi (Petitioner) asks the Court to order his release from immigration detention at Krome North Service Processing Center (Krome) or, alternatively, to order Respondents to provide him with a bond hearing. Petition at 9. Petitioner claims that he is a United States citizen and Respondents therefore lack any legal

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<sup>1</sup> Should the Court reach the merits of the Petition, then several of the named respondents are not proper parties-defendant to this habeas action and should be dismissed. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("[I]n habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."). Because Petitioner is detained at Krome, his immediate custodian is acting Assistant Field Office Director Charles Parra. Accordingly, the only proper respondent to this case is acting AFOD Parra, in his official capacity. He should be substituted as the sole respondent to this action and all other named respondents should be dismissed. *Mayorga v. Meade*, No. 24-cv-22131, 2024 WL 4298815, at \*3 (S.D. Fla. Sept. 26, 2024) (Bloom, J.) (substituting as respondent the Assistant Field Director of facility where petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

authority to detain him. Petition at ¶ 45-46. He also claims that his detention without a bond hearing violates the Due Process Clause. For the reasons below, Petitioner is incorrect on both fronts, the Court lacks subject matter jurisdiction, and the Petition should be dismissed.<sup>2</sup>

#### FACTUAL & PROCEDURAL BACKGROUND

Petitioner is a native and citizen of the Kingdom of Jordan, born in Palestine. *See Exhibit A*, Form I-213, Record of Deportable/Inadmissible Alien dated May 19, 2025. On January 23, 1978, he entered the United States as a lawful permanent resident. *See Exhibit B*, Notice to Appear.

On March 12, 1998, Petitioner was convicted of Principal to Trafficking in Cocaine/28-200 grams and Possession of Cocaine. *See Exhibit C*, docket sheet for case number: 94CF001722. On May 27, 1998, the legacy Immigration and Nationality Service issued a Notice to Appear (NTA), charging Petitioner with removability under INA § 237(a)(2)(A)(iii), as amended, in that at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43) of the Act; and § 237(a)(2)(B)(i), as amended, in that at any time after admission, you have been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802), other than a single offense involving possession for one's own use of 30 grams or less of marijuana. *See Exhibit B*.

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<sup>2</sup> As described below and admitted in the Petition (Petition at ¶ 34), Petitioner is in *post-order of removal* detention, governed by 8 U.S.C. § 1231. This case therefore does not involve the BIA decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), or any decisions by this Court that have rejected the BIA's interpretation of Section 1225(b)(2). *See e.g. Perez v. Parra*, Case No. 25-cv-24820, DE 9 (S.D. Fla. October 27, 2025); *but see Morales v. Noem*, -- F.Supp. 3d --, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026) (Singhal, J.).

On February 3, 2000, the immigration judge ordered Petitioner removed to Jordan. *See Exhibit D*, Removal Order. Petitioner waived appeal. *Id.*

On or about May 3, 2000, Petitioner was released on an Order of Supervision (OSUP) after the Jordanian Consulate declined to issue a travel document. *See Exhibit E*, Detention History; **Exhibit F**, Declaration of Deportation Officer Jean Josil (the Declaration), at ¶ 11.

On [REDACTED] Petitioner was convicted of trafficking in phenethylamines; possession of a firearm, ammo, electric weapon, device, or carry concealed weapon by a convicted felon; possession or use of drug paraphernalia; and possession of marijuana. *See Exhibit G*, docket sheet of case number: [REDACTED]. Petitioner was sentenced to 36 months in prison. *Id.*

On June 18, 2009, Petitioner was released from state custody. *See Exhibit H*, Order of Supervision dated June 18, 2009.

On May 19, 2025, Petitioner reported to ICE ERO for his scheduled OSUP appointment and was taken into ICE ERO custody because ICE ERO intends to effectuate his removal from the United States. *See Exhibit A*; *see also* Declaration at ¶ 16.

On July 18, 2025, ICE ERO served Petitioner with Notice to Alien of Interview for Review of Custody Status informing him that he would be interview on August 17, 2025. *See Exhibit I*, Notice to Alien of Interview for Review of Custody Status served July 18, 2025.

On or about August 21, 2025, ICE ERO recommended continued detention. Declaration at ¶ 18.

On October 1, 2025, ICE ERO served Petitioner with Notice to Alien of Interview for Review of Custody Status informing him that he would be interview on October 31, 2025. *See Exhibit J*, Notice to Alien of Interview for Review of Custody Status served October 1, 2025.

ICE ERO revoked Petitioner's OSUP on October 14, 2025, pursuant to 8 C.F.R. § 241.13. *See Exhibit K*, Notice of Revocation of Release. On the same day, Petitioner was given an informal interview pursuant to 8 CFR § 241.4(l)(1). Declaration at ¶ 21.

On or about November 7, 2025, ICE ERO recommended continued detention. *Id.* at ¶ 22.

On July 9, 2025, ICE ERO requested from Palestine a travel document to effectuate Petitioner's removal to Israel; its request remains pending. *See* Declaration at ¶¶ 23-24. ICE ERO is making active efforts to obtain the necessary travel document. *Id.* at ¶ 25.

Petitioner remains detained at Krome North Service Processing Center in Miami, FL. *Id.* at ¶ 26.

## ARGUMENT

### **I. The Court lacks subject matter jurisdiction**

In its order to show cause, the Court directed Respondents to specifically address whether the Court possessed subject-matter jurisdiction over the Petition. It does not.

Petitioner alleges that he is a United States Citizen and that Respondents therefore lack any authority to detain him. Petition at ¶¶ 33, 45-46. By affirmative alleging United States citizenship, Petitioner has pleaded himself outside of this Court's subject-matter jurisdiction.

#### **A. Section 1252(b)(9) bars relief and review**

The Eleventh Circuit has unequivocally stated that a district court "lacked jurisdiction over [a] § 2241 habeas corpus petition, which rested on [the petitioner's] claim to U.S. citizenship." *Fagan v. United States*, No. 21-13524, 2023 WL 2663239, at \*2 (11th Cir. Mar. 28, 2023). Specifically, the *Fagan* court held that the INA's jurisdiction-stripping provision at 8 U.S.C. § 1252(b)(9)—in conjunction with Section 1252(b)(5), dealing with petitions for

review filed in the courts of appeals—confirms that a “petitioner may have such a nationality claim decided ... *only* by a petition for review [in the courts of appeal], not by a § 2241 petition [in the district court].” *Id.* (citing 8 U.S.C. § 1252(b)(5)(C)) (emphasis in original).

The court further explained that “since the passage of the REAL ID Act in 2005, a petition for review filed with the appropriate court is now a non-citizen’s exclusive means of review of a removal order.” *Id.* (cleaned up) (citing *Alexandre v. U.S. Att’y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006); 8 U.S.C. § 1252(a)(5)). Through the REAL ID Act, Congress expanded the jurisdiction of courts of appeals “to review all legal and constitutional errors in a removal order,” but it precluded “habeas corpus relief” in the district courts under § 2241. *Id.* While Fagan is not a published decision of the Eleventh Circuit, other courts of appeals have reached the same conclusions. *See e.g. Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1275 (10th Cir. 2018) (“Although [petitioner] seeks release from detention, his claim is based on the alleged invalidity of his order of removal. ... [Petitioner] seeks invalidation of that order on the basis of citizenship, which would result in his release. Accordingly, we conclude that he is seeking “judicial review of an order of removal” which is barred by § 1252(a)(5).”); *Johnson v. Whitehead*, 647 F.3d 120, 125 (4th Cir. 2011) (“Because 8 U.S.C. §§ 1252(b)(9) and 1503(a) prohibit Johnson from obtaining review of his citizenship claims through a habeas corpus petition, we affirm the district court’s jurisdictional dismissal of Johnson’s petition for a writ of habeas corpus.”).

As these courts have noted, read in conjunction with Section 1252(b)(9), Section 1252(a)(5) expresses Congress’s intent to channel and consolidate judicial review of every aspect of removal proceedings into the petition-for-review process in the courts of appeals. H.R. Conf. Rep. No. 109-72, at 174–75; *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)” as part of a petition for review). In fact, “most claims that even relate to removal” are improper if brought before the district court. *E.O.H.C. v. Sec. United States Dep’t of Homeland Sec.* 950 F.3d 177, 184 (3d Cir. 2020). Pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(a)(5), “Congress has stripped the District Courts of jurisdiction to decide all legal and factual questions related to an alien’s eligibility for removal.” *Guzman v. Barr*, No. 19-cv-07163, 2021 U.S. Dist. LEXIS 7555, 2021 WL 135909, at \*3 (S.D.N.Y. Jan. 14, 2021) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, (1999) (“*AADC*”) (describing 8 U.S.C. § 1252 as a “zipper clause” which prohibits “non-final-order” judicial review of removal questions)); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (“Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition-for-review] process.”).

That should resolve this case. Petitioner can (and no doubt, will) challenge his removal in front of an immigration judge, who will determine whether Petitioner is removable. In immigration court, the government must show by clear and convincing evidence that Petitioner is removable. 8 U.S.C. § 1229a(c)(3). This will plainly include resolving Petitioner’s claim to being a United States citizen. Petitioner then will have the right to appeal any adverse order from the IJ to the BIA. 8 U.S.C. § 1229a(c)(5). If he is unsuccessful with his administrative appeal, he can obtain Article III judicial review by filing a petition for review with the appropriate court of appeals. 8 U.S.C. § 1252(a)(5).

The decision to detain Petitioner and his removability are inextricably intertwined and confirms the importance of Petitioner pursuing this challenge before an IJ first. *See Tazu v. AG*

*United States*, 975 F.3d 292, 299 (3d Cir. 2020) (finding that § 1252(b)(9) bars review to questions that “are bound up with (and thus ‘arise from’) an ‘action taken’ to remove [an alien].”). Petitioner’s charge of removability clearly falls within that category. He challenges *whether* he can be detained, and *whether* he can be removed. That goes to the heart—and is certainly “part of”—Petitioner’s removal. *Id.*

### **B. The Petition Runs Afoul of § 1252(g)**

Petitioner’s request for relief also run headlong into the independent jurisdictional bar contained in § 1252(g). He challenges the Government’s decisions to charge him with removability and then detain him, which arise “from the decision [and] action” to “commence proceedings.” 8 U.S.C. § 1252(g). Regardless of his framing, this Court does not have jurisdiction to entertain such a challenge, and Petitioner must do so through a petition for review.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory).”<sup>3</sup> *Id.* Though this section “does not sweep broadly,” *Tazu*, 975 F.3d at 296, its

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<sup>3</sup> 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); *see also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 & nn.3–4 (6th Cir. 2022) (explaining the historical development of § 1252(g)).

“narrow sweep is firm,” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by § 1252, courts “cannot entertain challenges to the enumerated executive branch decisions or actions.” *Id.*

Section 1252(g) was “‘directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion,’” to protect “‘no deferred action’ decisions and similar discretionary decisions.” *Tazu*, 975 F.3d at 297 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 (1999)). This limitation exists for “good reason:” so “[a]t each stage the Executive has discretion to abandon the endeavor.” *AADC*, 525 U.S. at 483-84. In addition, through § 1252(g) and other provisions of the INA, Congress “aimed to prevent removal proceedings from becoming ‘fragment[ed], and hence prolong[ed].’” *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); see *Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) (“Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.”).

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about *whether* and *when* to commence removal proceedings. See *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (“We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”). Under the plain text of § 1252(g), the provision must apply equally to decisions and actions to *commence* proceedings that ultimately may end in the execution of a final removal order. See *Jimenez-Angeles*, 291 F.3d at 599; see also *Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false-arrest claim that “directly challenge[d] [the] decision to commence expedited removal

proceedings”); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (determining that § 1252(g) prohibited review of an alien’s First Amendment retaliation claim based on the Attorney General’s decision to put him into exclusion proceedings).

The scope of § 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security 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. 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).”); *Tazu*, 975 F.3d at 298–99 (“Tazu also challenges the Government’s re-detaining him for prompt removal. . . . While this claim does not challenge the Attorney General’s *decision* to execute his removal order, it does attack the *action* taken to execute that order. So, under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.”).

In *Tazu*, the Third Circuit carefully analyzed the plain text of the statute and determined that the word “decision” means “the act of settling or terminating (as a contest or controversy) by giving judgment.” 975 F.3d at 297 (citing *Decision*, Webster’s Third New International Dictionary (1966)). Applying this definition, the Court there held that “to settle or terminate the execution of a removal order, the Attorney General must choose a date for that removal.” *Id.* Section 1252(g) expressly refers to the decision to commence proceedings, which includes whether and when to commence them. The decision whether to initiate a

removal proceeding against an alien is the exact type of prosecutorial discretion Congress had in mind in enacting this provision and is consistent with the type of discretion the Third Circuit addressed in *Tazu*. The act of detaining Petitioner is part and parcel of the initiation of the removal proceeding and therefore also barred by § 1252(g). *Id.* at 298-99.

## **II. The Petition fails to state a claim under *Zadvydas* and its progeny**

Should the Court disagree with the above and find that it possesses subject matter-jurisdiction, then the Petition should be denied because the Petition fails to state a claim.

Section 1231 governs the detention and removal of aliens ordered removed and it is the statutory basis for Petitioner's detention. The statute provides that "when an alien is ordered removed," ICE *shall* detain and "remove the alien from the United States within a period of 90 days" (referred to as the "removal period"). 8 U.S.C. § 1231(a)(1)(A). The statute further provides that the removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If 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.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

*See* 8 U.S.C. § 1231(a)(1)(B). During this 90-day removal period, ICE *must* detain aliens, *see* 8 U.S.C. § 1231(a)(2), but it may continue to detain them, constitutionally, beyond that 90-day period. *See* 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Specifically, *Zadvydas* provides that ICE may continue to detain a noncitizen under a final order of removal for an additional three months—creating a presumptively reasonable detention period of 180 days. *See Zadvydas*, 533 U.S. at 701. After the conclusion of this 180-day removal period, an alien in ICE custody may

challenge his continued detention in habeas corpus proceedings on the ground that there is no significant likelihood that his removal will occur in the reasonably foreseeable future. *See id.* In *Akinwale*, the Eleventh Circuit clarified that, to state a claim under *Zadvydas*, “the alien ... must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 287 F.3d at 1052; *see also Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009) (same).

But Petitioner gets that burden *exactly backwards* in his Petition. *See* Petition at ¶ 41 (alleging his Petition should be granted because “DHS has been unable to show that Petitioner is likely to be removed in the reasonably foreseeable future”). As made clear by the Supreme Court in *Zadvydas* and the Eleventh Circuit in *Gozo* and *Akinwale*, it is Petitioner who bears the initial burden to show that there is no substantial likelihood of removal in the reasonably foreseeable future; Respondents have no affirmative burden to show that removal is imminent.

Setting aside whether Petitioner made any effort to allege or show no significant likelihood of removal in the reasonably foreseeable future (he did not, due primarily to his improper framing of his burden), on July 9, 2025, ICE ERO requested from Palestine a travel document to effectuate Petitioner’s removal to Israel and its request remains pending. *See* Declaration at ¶¶ 23-24. As averred in the Declaration, ICE ERO is making active efforts to obtain the necessary travel document. *Id.* at ¶ 25. Nothing in the Petition refutes these averments or would otherwise lead to the conclusion that Petitioner’s detention has been unreasonably prolonged, let alone that it will be indefinite (as Mr. *Zadvydas* showed).

Because Petitioner has neither alleged nor shown that there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Gozo*,

309 F. App'x at 346 (quotation marks omitted), the Petition fails to state a claim under *Zadvydas* and its progeny and should be dismissed.

### **III. Petitioner is not a United States citizen**

As explained above, Petitioner's *claim* to United States citizenship (regardless of whether that claim is correct, which can only be decided by the relevant court of appeals) is what causes the INA's jurisdiction-stripping provisions to apply. Moreover, even if those provisions didn't apply, the Petition still fails to state a claim under *Zadvydas* and is subject to denial without prejudice.

That said—because the Court has directed Respondents to specifically address “whether Petitioner is indeed a United States citizen” [DE 6]—Respondents provide the following analysis showing that he is not.

Under former INA § 321(a), which applies to individuals, like Petitioner, who were born prior to February 27, 2001 and who met the requirements of this provision prior to its repeal on February 27, 2001, a child born outside of the United States automatically became a citizen of the United States when the following conditions had been fulfilled:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and
- (4) Such naturalization takes place while such child is under the age of eighteen years; and

- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.
- (6) If the child is adopted, this section applies only “if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, [and] in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.”

See 8 U.S.C. § 1432 (1984).<sup>4</sup>

In this case, Petitioner was born in wedlock and was admitted as an LPR when he was eight months old. While his father naturalized when Petitioner was eight years old, his mother did not naturalize until he was 45. Because *both* parents did not naturalize prior to Petitioner turning 18, he has not made a probative claim under point (1) above.

Petitioner’s mother was also alive when he was eighteen, since she naturalized when he was 45 years old. Therefore, Petitioner has not made a probative claim under point (2) above.

The only possibility for Petitioner to derive citizenship from his father pursuant to former INA § 321 would be if his father had *legal custody* following the April 15, 1984 divorce under point (3) above. “Legal custody, which refers to the responsibility for and authority over a child, is determined according to the relevant jurisdiction’s law or is determined by a

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<sup>4</sup> The applicable version of this statute is the version in effect when the last condition was met. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec.153 (BIA 2001); *Matter of L-*, 7 I&N Dec 512 (R.C. 1957). Here’s that would be the version of INA § 312 in effect in 1984, when Petitioner’s parents’ divorce was finalized.

court decree or order. If there was a judicial determination or judicial or statutory grant of custody, then the parent to whom custody was granted had legal custody for former INA 321 purposes.” *Matter of M-*, 3 I&N Dec. 850 (BIA 1950)).

Here, Petitioner’s parents divorced in Louisiana. Louisiana law states that “[i]n a proceeding for divorce or thereafter, the court shall award custody of a child in accordance with the best interest of the child. La. Civ. Code art. 131.

And article 132 states:

If the parents agree who is to have custody, the court shall award custody in accordance with their agreement unless the provisions of R.S. 9:364 apply or the best interest of the child requires a different award. Subject to the provisions of R.S. 9:364, in the absence of agreement, or if the agreement is not in the best interest of the child, the court shall award custody to the parents jointly; however, if custody in one parent is shown by clear and convincing evidence to serve the best interest of the child, the court shall award custody to that parent.

La. Civ. Code art. 132. Further, article 136 states:

Subject to R.S. 9:341 and 364, a parent not granted custody or joint custody of a child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would not be in the best interest of the child.

La. Civ. Code art. 136(A).

Here, the divorce decree Petitioner attached to his Petition in support of his claimed citizenship clearly indicates that his mother was granted primary custody, with visitation rights granted to his father. DE 1-2 at 7. Although Petitioner’s father naturalized when he was eight years old, his father’s naturalization occurred on November 27, 1985, after the divorce, when Petitioner was in the legal custody of his mother. And his mother did not naturalize until Petitioner was 45 years old. Because the family court awarded the mother legal custody of Petitioner in the divorce, Petitioner has failed to establish a probative claim to United States citizenship pursuant to former INA § 321.

CONCLUSION

Because Sections 1252(b)(9) and 1252(g) strip this Court of subject-matter jurisdiction over a habeas petition premised on a claim of United States citizenship, the Court should dismiss the Petition. Alternatively, if the Court finds that it possesses jurisdiction, then Petitioner has failed to show there is no substantial likelihood of his removal in the reasonably foreseeable future, his Petition fails to state a claim under Zadvydas, and the Court should still dismiss Petition, without prejudice.

Respectfully submitted,

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