

1 TODD BLANCHE
 Deputy Attorney General of the United States
 2 SIGAL CHATTAH
 First Assistant United States Attorney
 3 District of Nevada
 Nevada Bar Number 8264
 4 VIRGINIA T. TOMOVA
 Assistant United States Attorney
 5 Nevada Bar No. 12504
 501 Las Vegas Blvd. So., Suite 1100
 6 Las Vegas, Nevada 89101
 Phone: (702) 388-6336
 7 Fax: (702) 388-6787
Virginia.Tomova@usdoj.gov
 8 *Attorneys for the Federal Respondents*

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

10 HAMED SALIMABADI,
 11
 12 Petitioner,
 v.

Case No. 2:25-cv-02508-JAD-DJA
**Federal Respondents' Response to
 Petition for Writ of Habeas Corpus**

13 KRISTI NOEM, in her official capacity as
 Secretary, U.S. Department of
 14 Homeland Security; U.S. DEPARTMENT
 OF HOMELAND SECURITY; PAMELA
 15 J. BONDI, in her official capacity as
 Attorney General of the United States;
 16 TODD LYONS, in his official capacity as
 Acting Director and Senior Official
 17 Performing the Duties of the Director for
 U.S. Immigration and Customs; JASON
 18 KNIGHT, in his official capacity as Acting
 Field Office Director, Salt Lake City Field
 19 Office Director, U.S. Immigration &
 Customs Enforcement; MARCOS
 20 CHARLES, in his official capacity as Acting
 Executive Associate Director, Enforcement
 21 and Removal Operations, U.S. Immigration
 & Customs Enforcement; U.S.
 22 IMMIGRATION AND CUSTOMS
 ENFORCEMENT JOHN MATTOS,
 23 in his official capacity as Warden, Nevada
 Southern Detention Facility,
 24
 25 Respondents.

26 Federal Respondents through undersigned counsel, hereby file their response to
 27 Petitioner Hamed Salimabadi's Petition for Writ of Habeas Corpus. The petition should be
 28 denied because Petitioner's detention pending removal is authorized under 8 U.S.C. §

1 1231(a)(6) and does not violate his due process rights. In addition, his detention is not
2 unconstitutionally prolonged under the Supreme Court Decision, but rather reasonable
3 pursuant to the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). This
4 response is supported by the following memorandum of points and authorities.

5 Respectfully submitted this 8th day of January 2026.

6 TODD BLANCHE
7 Deputy Attorney General of the United States
8 SIGAL CHATTAH
9 First Assistant United States Attorney

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

13 **Memorandum of Points and Authorities**

14 Petitioner Salimabadi's detention pending removal is authorized under 8 U.S.C. §
15 1231(a)(6). And it is not unconstitutionally prolonged under the Supreme Court's decision
16 in *Zadvydas*, 533 U.S. 678. Rather, the detention is "presumptively reasonable" under the
17 Supreme Court's decision. *See id.* at 701. Petitioner, however, has not carried his burden of
18 demonstrating there is "no significant likelihood of removal in the reasonably foreseeable
19 future." *Zadvydas*, 533 U.S. at 701. Notwithstanding this precedent, Petitioner claims his
20 detention is unconstitutionally indefinite because there is no reasonable prospect of removal
21 in the reasonably foreseeable future to the country designated by the Immigration Judge. *See*
22 ECF No. 1, pp. 2-4.

23 Petitioner is subject to a removal order, dated February 23, 2006, following a finding
24 by an IJ that the Petitioner is removable to Iran, because he is not a citizen of the United
25 States, and he has a conviction on January 15, 2002 in the Superior Court of California, for
26 grand theft involving rifles and handguns, champagne and wine in violation of California
27 Penal Code, § 487(a). *See* Removal Order, attached as Exhibit A; *see also* NTA, attached as
28 Exhibit B. Petitioner did not appeal the IJ's order of removal, and such order became final
on March 23, 2006. Subsequently, Petitioner was placed on supervised release by
Department of Homeland Security (DHS). A condition of his release was that he had to

1 make good faith efforts to obtain travel documents from Iran to effectuate his removal. *See*
2 Order of Supervision, attached as Exhibit C. After 23 years since his final removal order,
3 there does not appear to be any indication that Petitioner has made any efforts to obtain
4 such travel documents from Iran. He has not provided any written requests that he had
5 placed with the Iranian Embassy or Consulate, as required by the Order of Supervision. *Id.*
6 Subsequently, DHS revoked his supervised release and detained him pursuant to the final
7 removal order. *See* Warrant of Removal/Deportation, attached as Exhibit D. All the above
8 is lawful and in compliance under the INA. Currently, DHS is making good faith efforts to
9 obtain travel documents from the Iranian Consulate or Embassy so that this Petitioner can
10 be removed. Petitioner has not made any good faith efforts to obtain such travel documents,
11 which violates the Order of Supervision. Exhibit C. It is common that when DHS detains
12 individuals like Petitioner, who are detained subject to final removal orders, do not attempt
13 to comply with the conditions under the Order of Supervision. Instead they want to place
14 that burden solely on the government. Most of the Petitioners also conveniently hide their
15 criminal histories before the Court, like this Petitioner. In his petition, Petitioner makes
16 generalized assumptions of national origin bias without any evidence and states that,
17 “Respondents’ enforcement actions were explicitly based on national origin[.]” ECF No. 1,
18 p. 17:1-2. Petitioner’s criminal record proves otherwise. *See* I-213, attached as Exhibit E.

19 Contrary to Petitioner’s arguments, Iran has recently accepted its citizens who had
20 been deported from the United States in the latest months with the most recent acceptance
21 on or before December 7, 2025. Petitioner now brings a petition for a writ of habeas corpus,
22 seeking immediate release. But the Court does not have jurisdiction over the petition,
23 because 8 U.S.C. § 1252 bars review of his claims. And even if the Court had jurisdiction,
24 the claims fail on the merits. The procedures followed by DHS regarding Petitioner’s
25 supervised release, revocation, and detention complied with the INA and relevant
26 regulations Petitioner signed the order of supervision recognizing that he is required to meet
27 certain conditions and requirements. Exhibit C. Petitioner was provided with the order of
28 supervision and an opportunity to review it. Contrary to Petitioner’s arguments, the

1 evidence demonstrates that DHS and U.S. Immigration and Customs Enforcement (ICE) is
2 engaged in continuing and progressing efforts to effectuate his removal to Iran, pursuant to
3 his final removal order. *Id.* Petitioner's assertions that ICE cannot effectuate his removal are
4 speculative. They provided notice and opportunities for review. And they plainly did not
5 violate the Administrative Procedure Act ("APA") or due process. The Court should
6 dismiss the petition.

7 **BACKGROUND**

8 **I. Petitioner's Immigration and Criminal History**

9 Petitioner is a 44-year-old alien from Iran residing in this country, subject to final
10 removal order. Exhibits A and B. Petitioner has a criminal conviction on January 15, 2002,
11 in the Superior Court of California, for grand theft involving rifles and handguns,
12 champagne and wine in violation of California Penal Code, § 487(a). Exhibit E.

13 Petitioner had an order of removal issued on February 23, 2006. Exhibit A.
14 Petitioner did not appeal the IJ's order of removal, and such order became final on March
15 23, 2006. Subsequently, Petitioner was placed on supervised release by Department of
16 Homeland Security (DHS). A condition of his release was that he had to make good faith
17 efforts to obtain travel documents from Iran to effectuate his removal. Exhibit C. After 23
18 years since his final removal order, there does not appear to be any indication that Petitioner
19 has made any efforts to obtain such travel documents from Iran. He has not provided any
20 written requests to DHS/ICE regarding any requests he had placed with the Iranian
21 Embassy or Consulate, as required by the Order of Supervision. Exhibit C. Subsequently,
22 DHS revoked his supervised release and detained him pursuant to the final removal order.
23 Exhibit D. Following expiration of the mandatory 90-day removal period, ICE released
24 Petitioner from custody pursuant to an Order of Supervision. Exhibit C; *see* 8 U.S.C. §
25 1231(a)(3) ("If the alien does not leave or is not removed within the [90-day] removal period,
26 the alien, pending removal, shall be subject to supervision under regulations" found at 8
27 C.F.R. §§ 241.4, 241.5). Subsequently, Petitioner was placed on supervised release by DHS
28 Between his release in 2006, and recent re-detention on June 26, 2025, Petitioner was

1 required to “provide ICE with written copies of requests to Embassies or Consulates
2 requesting the issuance of a travel document.” Exhibit C. Petitioner also had to “provide
3 ICE with written responses from the Embass[ies] or Consulate[s] regarding [his] request[s].”
4 *Id.* A condition of his release was that Petitioner had to make good faith efforts to obtain
5 travel documents to his home country, Iran. *Id.* Petitioner knew of such conditions upon his
6 release, as he signed the Order of Supervision. *Id.* He was also required to provide copies of
7 written requests he had made to the Iranian Consulate or Embassy about obtaining travel
8 documents. *Id.* He failed to do that for 23 years, as if the final removal order never existed.
9 All the above are violations of the conditions of Petitioner’s supervised release. Pursuant to
10 the final removal order and his criminal conviction of grand theft involving handguns and
11 rifles, DHS detained Petitioner. Exhibits D and A.

12 **II. Procedural History**

13 Petitioner filed his petition on December 16, 2025 in which he raised procedural and
14 substantive due process and APA violations regarding his detention, and the revocation of
15 the order of supervision. ECF No. 1, pp. 14-15, 17-22. He also raises equal protection
16 violations based on speculative statements that he was detained because of “his Iranian
17 nationality.” *Id.*, pp. 16-17. Federal Respondents submit this memorandum of law in
18 response to the petition.

19 **III. Relevant Statutory and Regulatory Background**

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

21 Where, as here, an alien is subject to a final order of removal, there is a 90-day
22 “removal period,” during which the government “shall” remove the alien. 8 U.S.C. §
23 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). And the
24 mandatory removal period begins on the latest of three possible dates: (1) the date an order
25 of removal becomes “administratively final,” (2) the date of the final order of any court that
26 entered a stay of removal, or (3) the date the alien is released from non-immigration
27 detention. 8 U.S.C. § 1231(a)(1)(B). There are at least three potential outcomes in the event
28 the government does not remove an alien during the 90-day mandatory removal period.

1 First, the government may release the alien subject to conditions of supervised release. *See*
2 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien
3 “fails or refuses to make timely application in good faith for travel or other documents
4 necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject
5 to an order of removal.” 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further
6 detain certain categories of aliens, including those “inadmissible” under 8 U.S.C. § 1182. *See*
7 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as
8 the “post removal period.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). The INA
9 does not place an explicit time limit on how long detention during the “post-removal-period”
10 can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court
11 has held that the government may only detain aliens in the post-removal-period for the time
12 “reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydus*,
13 533 U.S. at 689. And the Supreme Court further clarified that a six-month period of
14 detention is “presumptively reasonable.” *Id.* at 701. “After this 6-month period, once the
15 alien provides good reason to believe that there is no significant likelihood of removal in the
16 reasonably foreseeable future, the Government must respond with evidence sufficient to
17 rebut that showing.” *Id.*

18 **B. Orders of Supervision**

19 In the event the government does not further detain and instead releases the alien at
20 the end of the 90-day mandatory removal period, the government must do so under
21 conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that an alien who
22 “does not leave or is not removed within the removal period ... shall be subject to
23 supervision”); *see also* 8 C.F.R. §§ 241.4(j); 241.5. Regulations promulgated pursuant to the
24 INA require that conditions of supervised release include reporting to an immigration
25 officer; making “efforts to obtain a travel document and assist[ing] the [government] in
26 obtaining a travel document”; reporting for physical and mental examinations; obtaining
27 advance approval of travel; and providing ICE with written notice of any address changes.
28 *See* 8 C.F.R. § 241.5(a).

1 If the alien violates a condition of release, the government can revoke the order of
2 supervision and return the alien to custody. *See* 8 C.F.R. § 241.4(l). In that scenario, the
3 government must notify the alien of “the reasons for revocation,” and “conduct an initial
4 interview promptly” to give the alien “an opportunity to respond to the reasons for
5 revocation stated in the notification.” *See id.* § 241.4(l)(1). If the alien is not released after
6 the initial interview, there is a subsequent review process, one which entails a records review
7 and scheduling of an interview which ordinarily takes place within three months of the
8 revocation of release. *Id.* § 241.4(l)(3). The final review includes an evaluation of any
9 disputed facts, and a decision as to whether the facts as determined support revocation and
10 further denial of release. *Id.* Thereafter, the government conducts annual custody reviews
11 in accordance with 8 C.F.R. §§ 241.4(i), (j), and (k). *Id.*

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

13 As noted above a separate basis for detention of aliens with final orders of removal is
14 via an extension of the removal period in circumstances where the alien “fails or refuses to
15 make timely application in good faith for travel or other documents necessary to the alien’s
16 departure.” 8 U.S.C. § 1231(a)(1)(C). In such cases, the government must serve the alien a
17 “Notice of Failure to Comply,” which sets forth the relevant statutory provisions in play (8
18 U.S.C. §§ 1231(a)(1)(C), 1253(a)) and provides “an explanation of the necessary steps that
19 the alien must take in order to comply with the statutory requirements.” 8 C.F.R. §
20 241.4(g)(5)(ii). The government must also advise the alien that the “Notice of Failure to
21 Comply shall have the effect of extending the removal period as provided by law, if the
22 removal period has not yet expired,” and that the government is not required to complete
23 any scheduled custody reviews under 8 C.F.R. § 241.4 until the alien has “demonstrated
24 compliance with the statutory obligations.” *Id.* § 241.4(g)(5)(iii).

25 **D. Removal to Third Country**

26 As a general matter, aliens ordered removed “may designate one country to which
27 [he or she] wants to be removed,” and DHS “shall remove the alien to [that] country[.]” 8
28 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or

1 her designated country, including if “the government of the country is not willing to accept
2 the alien into the country.” *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien “shall” be
3 removed to his or her country of nationality or citizenship, unless the country “is not willing
4 to accept” the alien.” *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a
5 country of designation or the country of nationality or citizenship, then the government may
6 consider other options, including “[t]he country from which the alien was admitted to the
7 United States,” “[t]he country in which the alien was born,” or “[t]he country in which the
8 alien last resided[.]” *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries
9 listed in subparagraph (E) is “impracticable, inadvisable, or impossible,” then the alien may
10 be removed to any “country whose government will accept the alien into that country.”
11 *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 341 (2005). In
12 addition, DHS “may not remove an alien to a country if the Attorney General decides that
13 the alien’s life or freedom would be threatened in that country because of [his or her] race,
14 religion, nationality, membership in a particular social group, or political opinion,” 8
15 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than
16 not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

17 LEGAL ARGUMENT

18 **I. The Court Lacks Jurisdiction Over the Petition**

19 **A. The INA and REAL ID Act Deprive This Court of Jurisdiction**

20 Federal courts are courts of limited jurisdiction. *See Kokkonen v. Guardian Life Ins. Co.*
21 *of Am.*, 511 U.S. 375, 377 (1994). They “possess only that power authorized by Constitution
22 and statute, which is not to be expanded by judicial decree.” *Id.* (citations omitted); *see also*
23 *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) (“Courts created by statute can have no jurisdiction
24 but such as statute confers.”); *cf. Romano v. Warden, FCI Fairton*, No. 23-2919 (CPO), 2025
25 WL 1189877, at *8 (D.N.J. Apr. 24, 2025) (observing, in prison habeas context, “[f]ederal
26 courts are courts of limited jurisdiction,” and where “Congress has committed a decision to
27 the unreviewable discretion of the BOP . . . § 2241 offers no basis for judicial intervention.”).

1 Through this habeas action, Petitioner challenges the recent revocation of his
2 supervised release and present detention for purposes of executing a final order of removal.
3 Congress, however, divested this Court from hearing such claims by way of the INA and the
4 REAL ID Act. *See* 8 U.S.C. §§ 1252(b)(9), (g). For these reasons, as discussed below, the
5 Court lacks jurisdiction over Petitioner’s claims challenging the revocation of supervised
6 release and re-detention pending removal.

7 At the outset, 8 U.S.C. § 1252(g), as amended by the REAL ID Act, deprives courts
8 of jurisdiction—including habeas corpus jurisdiction—over reviewing “any” claim “arising
9 from the decision or action” to (among other things) “execute removal orders.” Put
10 differently, this provision bars habeas review in federal district court of claims arising from a
11 decision or action to “execute” a final order of removal. *See Reno v. American-Arab Anti-*
12 *Discrimination Committee (“AADC”),* 525 U.S. 471, 482 (1999).¹ That provision bars
13 Petitioner’s claims here.

14 Indeed, every circuit court of appeals to address the issue has held that § 1252(g)
15 eliminates subject-matter jurisdiction over habeas challenges (including those raising
16 constitutional claims) to an arrest or detention for the purpose of executing a final removal
17 order. *See Rauda v. Jennings,* 55 F.4th 773, 778 (9th Cir. 2022) (holding court lacked
18 jurisdiction over habeas challenge to the exercise of discretion to execute removal order); *see*
19 *also Tazu v. Att’y Gen. United States,* 975 F.3d 292, 297 (3d Cir. 2020) (“The plain text of §
20 1252(g) covers decisions about *whether* and *when* to execute a removal order.”); *E.F.L. v.*
21 *Prim,* 986 F.3d 959, 964–65 (7th Cir. 2021) (holding § 1252(g) barred review of decision to
22 execute removal order while individual sought administrative relief); *Camarena v. Dir.,*
23 *Immigr. & Customs Enft,* 988 F.3d 1268, 1274 (11th Cir. 2021) (“[W]e do not have
24 jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the
25 government’s decision to execute a removal order. If we held otherwise, any petitioner

26
27
28 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).

1 could frame his or her claim as an attack on the government’s *authority* to execute a removal
2 order rather than its *execution* of a removal order.”); *Hamama v. Adducci*, 912 F.3d 869, 874
3 (6th Cir. 2018) (“Under a plain reading of the text of the statute, the Attorney General’s
4 enforcement of long-standing removal orders falls squarely under the Attorney General’s
5 decision to execute removal orders and is not subject to judicial review.”)²

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

19 Petitioner’s challenges regarding the execution of his final removal order are also
20 foreclosed under 8 U.S.C. § 1252(b)(9). In passing the REAL ID Act, Congress prescribed a
21 single path for Article III review of removal orders: “a petition for review filed with an
22 appropriate court of appeals.” 8 U.S.C. § 1252(a)(5); *see also Verde-Rodriguez v. Atty. Gen.*,
23 734 F.3d 198, 201 (3d Cir. 2013). And as the REAL ID Act further provides. “[j]udicial
24 review of *all questions of law and fact*, including interpretation of constitutional and statutory

25 ² Relatedly, § 1252(g) bars district court review of challenges to the method by which DHS chooses to commence removal
26 proceedings. *See Alvarez v. U.S. Immigr. & Customs Enfr*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)]
27 bars us from questioning ICE’s discretionary decisions to commence removal — and thus necessarily prevents us from
28 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).”).

1 provisions, arising from any action taken or proceeding brought to remove an alien from the United
2 States under this subchapter shall be available only in judicial review of a final order under
3 this section.” 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction, 8 U.S.C. §
4 1252(b)(9) and § 1252(a)(5) express Congress’s intent to funnel judicial review of every
5 aspect of removal proceedings into a petition for review filed in the courts of appeals. *See*
6 *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (recognizing that these provisions “clarified that
7 final orders of removal may not be reviewed in district courts, even via habeas corpus, and
8 may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d
9 442, 446 (3d Cir. 2005) (highlighting Congress’s “clear intent to have all challenges to
10 removal orders heard in a single forum (the courts of appeals)” via petition for review).
11 These provisions sweep more broadly than § 1252(g). *See Reno*, 525 U.S. at 483. Indeed,
12 pursuant to § 1252(b)(9) and 1252(a)(5), “most claims that even relate to removal” are
13 improper if brought before the district court. *E.O.H.C. v. Sec’y United States Dep’t of Homeland*
14 *Sec.*, 950 F.3d 177, 184 (3d Cir. 2020); *see also Reno*, 525 U.S. at 483 (describing § 1252(b)(9)
15 as an “unmistakable zipper clause,” and defining a zipper clause as one “that says ‘no
16 judicial review in deportation cases unless this section provides judicial review.’”).

17 Here, 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction over Petitioner’s claims.
18 Once again, the Third Circuit’s *Tazu* decision guides the analysis. In another part of that
19 decision, the Third Circuit held that the same claims concerning a revocation of supervised
20 release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9)
21 because the claims arose from actions taken to execute the petitioner’s removal. 975 F.3d at
22 299. Here, as in *Tazu*, Petitioner’s claims challenge the government’s decision to revoke
23 supervised release and re-detain him for removal. Petitioner’s claims arise directly out of
24 actions taken to remove him, and the questions raised by those claims are intertwined with
25 his removal. *See id.* Another recent decision from the District Court in *Khalil v. Joyce*, No. 25-
26 1963 (MEF), ECF No. 214, 2025 WL 1232369 (D.N.J. Apr. 29, 2025), does not cast doubt
27 on the conclusion that 8 U.S.C. §§ 1252(g) and 1252(b)(9) apply here. In that case, unlike
28 here, the petitioner had not been issued a final removal order, and so the District Court

1 concluded that § 1252(b)(9) did not apply because that provision “takes away federal district
2 court jurisdiction only after an order of removal has been entered,” and “none ha[d] been
3 entered” in that case. *Id.* at *60. As to § 1252(g), the District Court found that it was
4 inapplicable because the provision “pulls away jurisdiction over specific actions” by DHS—
5 “not over actions by the Secretary of State, like [the] determination” at issue, “and not over
6 across-the-board policies, like the one alleged” in that case. *Id.* Here, Petitioner does not
7 challenge any action by the Secretary of State, nor does he attack any alleged broad-based
8 policies. The reasoning behind the recent jurisdictional decision in *Khalil* does not affect the
9 conclusion here.

10 That conclusion, for the reasons above, is that Petitioner’s claims fall within the
11 INA’s jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9), so the Court
12 should dismiss the petition for lack of jurisdiction.³

13 **B. Petitioner’s Detention is Lawful**

14 There is no dispute that Petitioner is subject to a final order of removal. Exhibit A.
15 As a result, the “post-order” detention provisions of 8 U.S.C. § 1231 govern. Those
16 provisions require a 90-day mandatory removal period during which immigration officials
17 must detain the alien while attempting to secure his or her removal. *See* 8 U.S.C. §§
18 1231(a)(1), (2); *see Zadvydas*, 533 U.S. at 683 (“After entry of a final removal order and
19 during the 90-day removal period quo . . . aliens must be held in custody.” (internal citation
20 omitted)). Congress, however, provided for the detention of aliens following the 90-day
21 removal period in certain circumstances. As discussed, the Supreme Court has interpreted 8
22 U.S.C. § 1231(a)(6) to allow for post-order detention for a period “reasonably necessary to
23 bring about the alien’s removal from the United States. *Zadvydas*, 533 U.S. at 689. And
24 the Court held that detention for a period of six months is “presumptively reasonable.” *Id.*

25 _____
26 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.
27 Pa. Nov. 24, 2020), but respectfully submit that the case is also distinguishable. In *Patel*, the district court held that the
28 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.

1 After that six-month period, the alien bears the burden of showing that “there is no
2 significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the alien
3 successfully makes that showing, “the Government must respond with evidence sufficient to
4 rebut that showing.” *Id.* In addition, the 90-day removal period may be tolled and the alien
5 “may remain in detention during such extended period if [he or she] fails or refuses to make
6 timely application in good faith for travel or other documents necessary to the alien’s
7 departure or conspires or acts to prevent the alien’s removal subject to an order of removal.”
8 8 U.S.C. § 1231(a)(1)(C).

9 Here, Petitioner was detained for the 90-day removal period until his release on an
10 order of supervision on June 12, 2006. Exhibit C. He now challenges his present detention,
11 which began on June 25, 2025, when ICE revoked Petitioner’s supervised release by serving
12 him with a Warrant of Removal/Deportation. Exhibit D. That detention is lawful and
13 presumptively reasonable under *Zadvydas*. To hold otherwise, Petitioner would have to
14 demonstrate that he has been in (1) “post-removal order detention in excess of six months,”
15 and there is (2) “evidence of a good reason to believe that there is no significant likelihood of
16 removal in the reasonably foreseeable future.” *Jaime F. v. Barr*, No. CV 19-20706 (ES), 2020
17 WL 2316437, at *5 (D.N.J. May 11, 2020) (quotation omitted); *see also, e.g., Qing Di Wang v.*
18 *Carbone*, No. CIV.A. 05-2386 (JAP), 2005 WL 2656677, at *3 (D.N.J. Oct. 17, 2005).
19 Petitioner makes neither showing.

20 ***I. Petitioner Cannot Establish There Is No Significant Likelihood of his***
21 ***Removal in the Reasonably Foreseeable Future***

22 Petitioner cannot demonstrate that there is no significant likelihood of removal in the
23 reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701 (explaining alien challenging
24 detention beyond six-month period bears burden of showing there is no significant
25 likelihood of removal in reasonably foreseeable future). “Numerous courts ... have held that
26 a detainee’s failure to cooperate in obtaining travel documents precludes a finding that his
27 or her removal is not reasonably foreseeable.” *Ugarte v. Green*, No. CV 17-1436 (SRC), 2017
28 WL 6376498, at *3 (D.N.J. Dec. 13, 2017) (collecting cases); *see also, e.g., Conceicao v. Holder*,

1 No. CIV.A. 12-4668 CCC, 2013 WL 1121373, at *3 (D.N.J. Mar. 13, 2013) (“[W]here
2 Petitioner is refusing to sign the necessary travel documents, he has failed to cooperate in his
3 removal and has failed, in this Court, to establish that there is no likelihood of his removal in
4 the reasonably foreseeable future.”); *Camara v. Gonzalez*, No. CIV.A.06-1568 (JAG), 2007
5 WL 4322949, at *4 (D.N.J. Dec. 6, 2007) (finding petitioner did not state constitutional
6 claim under *Zadvydas* due to failure to cooperate with obtaining necessary travel
7 documentation). Here, Petitioner received an order of removal on February 23, 2006 which
8 became final on March 23, 2026, Exhibit A. But he does not allege he made any attempt to
9 cooperate in his removal in the more than 23 years since then. He does not allege that he
10 made any effort to obtain travel documents, such as by submitting applications for travel
11 documents to embassies or consulates as was required by the Order of Supervision and the
12 INA. That failure to cooperate in removal forecloses Petitioner’s *Zadvydas* claim.

13 For similar reasons, Petitioner’s detention is also lawful under 8 U.S.C. §
14 1231(a)(1)(C), which provides for suspension of the removal period and detention “beyond
15 a period of 90 days” if an alien “fails or refuses to make timely application in good faith for
16 travel or other documents necessary to [his or her] departure.” “Courts have long held that [8
17 U.S.C. § 1231(a)(1)(C)] not only stands for the proposition that the removal period may be
18 extended where an alien is the impediment to his [or her] own removal, but also that such an
19 alien cannot demand his [or her] release under *Zadvydas* as he [or she] has the keys to his [or
20 her] freedom in his [or her] pocket and could likely effectuate his [or her] removal by
21 providing the necessary information to the appropriate officials.” *Bailey v. Lynch*, No. CV 16-
22 2600 (JLL), 2016 WL 5791407, at *3 (D.N.J. Oct. 3, 2016). Here, again, Petitioner does not
23 allege that he made any effort to assist in his removal. Indeed, the failure to provide copies of
24 travel document requests from alternate countries was the basis for the revocation of his
25 supervision release. In the end, the INA imposes an affirmative duty on an alien “to make
26 timely application in good faith for travel and other documents necessary to [his or her]
27 departure,” and prescribes criminal penalties for willful failure to do so. *See* 8 U.S.C. §
28 1253(a)(1). Courts examining prolonged detention claims have thus considered whether a

1 petitioner has acted in a manner as to hinder or prevent removal such that the six-month
2 presumptively reasonable period under *Zadvydas* should be tolled. Where an alien “takes
3 actions delaying his/her removal (e.g. by refusing to cooperate with the ICE’s removal
4 efforts),” he or she “cannot demand his/her release upon expiration of these six months.”
5 *Zhang Xingquan v. Holder*, No. CIV.A. 12-7650 (MAS), 2013 WL 1750145, at *3 (D.N.J.
6 Apr. 23, 2013). “The reason is self-evident:” when an alien does not demonstrate that he or
7 she has made good faith efforts to assist with securing travel documents necessary to
8 effectuate his or her removal, the alien, once detained, “cannot convincingly argue that there
9 is no significant likelihood of removal in the reasonably foreseeable future if the detainee
10 controls the clock.” *Pelich v. I.N.S.*, 329 F.3d 1057, 1060 (9th Cir. 2003). Accordingly,
11 “*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate
12 his removal.” *U.S. ex rel. Kovalev v. Ashcroft*, 71 F. App’x 919, 924 (3d Cir. 2003) (quoting
13 *Pelich*, 329 F.3d at 1060). Such is the case here.

14 For the reasons above, assuming the Court finds habeas jurisdiction, the Court should
15 dismiss the *Zadvydas* claim on the merits.⁴

16 C. The APA and Due Process Claims Also Fail

17 Petitioner challenges ICE’s revocation of supervised release for the purpose of
18 executing the final removal order to Iran. Exhibit A. Petitioner claims that he was
19 “ambushed and taken into custody by officers despite having complied with his order of
20 release.” ECF No. 1, p. 3, ¶ 2. As presented above, that is far from the truth, as Petitioner
21 has not provided any evidence of compliance for 23 years. The Court should dismiss
22 Petitioner’s APA and Due Process Claims as a matter of law.

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

24 Petitioner claims that his “order of supervision was contrary to agency’s
25 constitutional power under the Fifth Amendment’s Due Process Clause...” ECF No. 1, p.
26 17, ¶ 73. But Petitioner does not identify any statutory or regulatory provision that the order

27 _____
28 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.

1 of supervision violated. Pursuant to the final removal order, Petitioner knew that he had to
2 make good efforts to contact the Iranian Consulate or Embassy. Petitioner claims that there
3 is no Iranian Consulate or Embassy. This statement is not truthful as there is an Iranian
4 Consulate and Embassy in Washington, DC which provides various services to Iranian
5 nationals and can assist with travel to Iran. Indeed, neither provision Petitioner cited
6 requires DHS to provide written notice of specific countries that an alien must contact in
7 attempting to secure travel documents to effectuate a final order of removal to a third
8 country. And 8 C.F.R. § 241.5(a)(2) specifically requires that an order of supervision “shall”
9 include “[a] requirement that the alien continue efforts to obtain a travel document and assist
10 [DHS] in obtaining a travel document.” That is precisely what the order of supervision
11 required here. Exhibit C. The Court should dismiss the APA claim.

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

13 The basic elements of due process are notice and an opportunity to be heard. *See*
14 *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Here, Petitioner received notice of the
15 condition of supervised release that he challenges in this habeas action. Exhibit C. And he
16 has not alleged any facts to demonstrate that he was denied an opportunity to be heard in
17 connection with the order of supervision or instructions that governed his supervised
18 release. As a matter of fact, Petitioner signed an acknowledgment of conditions of release
19 under an order of supervision. *Id.* As detailed above, Petitioner was issued an order of
20 removal on February 23, 2006, which became final on March 23, 2006, Exhibit A.
21 Petitioner did not appeal that removal order. Following the 90-day mandatory removal
22 period, ICE released Petitioner on an order of supervision. It is plain that “ICE has the
23 statutory and regulatory authority to release persons with removal orders under an order of
24 supervision.” *See Desousa v. Garland*, No. CV 21-3961, 2022 WL 1773604, at *3 (E.D. Pa.
25 May 31, 2022). Petitioner also received constitutionally adequate notice of the condition of
26 release requiring that he make good faith efforts to obtain travel documents. He signed an
27 acknowledgment of the conditions in the order of supervision. Exhibit C. After issuing the
28 Order of Supervision, ICE provided Petitioner with multiple documents that included

1 written notice of the conditions of release and penalties for noncompliance. *Id.* One penalty
2 was revocation of release. Petitioner then had multiple opportunities over the course of 23
3 years to challenge the conditions of release, seek clarification, or comply with the order of
4 supervision. He did none of these things. And Petitioner had the opportunity to ask ICE for
5 clarification as to those conditions — and specifically, to ask for any additional information
6 related to the condition that he make efforts to obtain travel documents. Petitioner did not
7 allege that he or his attorney sought clarification at any point during the 23-year period he
8 was on supervised release. Nor does Petitioner allege that he made efforts to obtain a travel
9 document or provide ICE with written requests for travel documents or acceptance letters
10 from alternate countries.

11 None of this amounts to a due process violation. The INA authorizes supervised
12 release of aliens in Petitioner’s shoes, *see* 8 U.S.C. § 1231(a)(3), and implementing
13 regulations require that the alien be subject to conditions of supervision which include the
14 very condition he challenges here: making efforts to obtain travel documents to facilitate
15 removal, *see* 8 C.F.R. § 241.5(a)(2). The condition of supervised release that required
16 Petitioner to make good faith efforts to secure travel documents to help secure his removal
17 fell “squarely within the parameters authorized by the statute and the regulations,” and thus
18 fails to rise to a due process violation. *See Desousa*, 2022 WL 1773604, at *3.

19 **D. Request for EAJA Fees Should be Denied.**

20 Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for
21 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United
22 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
23 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
24 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
25 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees
26 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that
27 in an action brought by or against the United States, a court must award fees and expenses
28 to a prevailing non-government party “unless the court finds that the position of the United

1 States was substantially justified or that special circumstances make an award unjust.” 28
2 U.S.C. § 2412(d)(1)(A).

3 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
4 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
5 this Response is substantially justified because other courts have found the arguments
6 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
7 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
8 Petitioner.

9 As described above, the United States District Court for the District of Nebraska
10 and the United States District Court for the Southern District of California have both
11 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
12 United States who have not been admitted are “applicants for admission” and are thus
13 subject to the mandatory detention provisions of “applicants for admission” under §
14 1225(b)(2). *See Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept.
15 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal.
16 Sept. 24, 2025). Because other federal judges have found persuasive the positions advanced
17 by the Federal Respondents in this case, the Federal Respondents’ position is substantially
18 justified. *See Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the
19 district court did not abuse its discretion, in finding that the United States’ position was
20 substantially justified for purposes of EAJA, where different judges disagreed about the
21 proper reading of the statute and the case involved an issue of first impression). Because the
22 United States’ position in this case is substantially justified, Petitioner’s request for
23 attorney’s fees under EAJA cannot prevail.

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

CONCLUSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For the foregoing reasons, the Court should deny the Motion for Temporary Restraining Order.

Respectfully submitted this 8th 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