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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 ALPEREN TEZCAN,

13 Petitioner,

14 v.

15 KRISTI NOEM, Secretary of the
Department of Homeland Security, *et*
16 *al.*,

17 Respondents.

Case No.: 26-cv-00077-JLS-VET

RESPONSE TO PETITION

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19 **I. Introduction**

20 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the
21 reasons set forth below, the Court should deny Petitioner's requests for relief and
22 dismiss the petition.

23 **II. Factual and Procedural Background¹**

24 Petitioner is a native and citizen of Turkey. *See* ECF No. 1 at 3; Declaration of
25 Ramon Meraz (Meraz Decl.) at ¶ 3. On December 2, 2024, Petitioner unlawfully
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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 entered the United States and was taken into ICE custody. *See* ECF No. 1 at 3; Meraz
2 Decl. at ¶ 4.

3 On February 6, 2025, DHS placed Petitioner into removal proceedings under
4 Immigration and Nationality Act (INA) § 240, 8 U.S.C. § 1229a, via the filing of a
5 Notice to Appear (NTA). Meraz Decl. at ¶ 5. The NTA charged Petitioner with
6 inadmissibility under INA §§ 212(a)(6)(A)(i) for being present without having been
7 admitted or paroled and 212(a)(7)(A)(i)(I) as an immigrant not in possession of a valid
8 entry document. *Id.*

9 On July 25, 2025, an Immigration Judge ordered Petitioner removed to Turkey
10 but granted withholding of removal to Turkey under INA § 241(b)(3). *Id.* at 6. Both
11 Petitioner and DHS waived appeal, and the decision became final on July 25, 2025. *Id.*

12 Since Petitioner was ordered removed, ICE has worked as expeditiously as
13 possible to identify a third country to which Petitioner may be removed. *Id.* at 7. On
14 September 10, 2025, ICE contacted ERO Removal and International Operations (RIO)
15 to seek a third country for removal. *Id.* at 8.

16 On September 24, 2025, October 31, 2025, November 7, 2025, November 12,
17 2025, November 21, 2025, and December 19, 2025, ERO requested updates from RIO
18 on the third country removal request. Meraz Decl. at ¶ 9. At this time, ICE is still in the
19 process of identifying third countries that may be willing to accept Petitioner for
20 removal. *Id.* at 10. ICE continues to diligently seek to identify a third country for
21 Petitioner's removal and believes there is a significant likelihood of removal to a third
22 country in the reasonably foreseeable future. *Id.* at ¶ 13.

23 **III. Argument**

24 **A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252**

25 Petitioner bears the burden of establishing that this Court has subject matter
26 jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770,
27 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). To the
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1 extent Petitioner’s claims arise from—or seek to enjoin—the decision to execute his
2 removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *See* 8 U.S.C.
3 § 1252(g) (“Except as provided in this section and *notwithstanding any other provision*
4 *of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other*
5 *habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have
6 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
7 decision or action by the Attorney General to commence proceedings, adjudicate cases,
8 or *execute removal orders* against any alien under this chapter.”) (emphasis added);
9 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was
10 good reason for Congress to focus special attention upon, and make special provision
11 for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
12 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
13 the initiation or prosecution of various stages in the deportation process.”). In other
14 words, § 1252(g) removes district court jurisdiction over “three discrete actions that the
15 Attorney may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate
16 cases, or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed).
17 Petitioner’s claims necessarily arise “from the decision or action by the Attorney
18 General to . . . execute removal orders,” over which Congress has explicitly foreclosed
19 district court jurisdiction. 8 U.S.C. § 1252(g). Accordingly, to the extent Petitioner’s
20 claims arise from—or seek to enjoin—the decision to execute his removal order, the
21 Court should deny and dismiss those claims for lack of jurisdiction under 8 U.S.C.
22 § 1252.

23 **B. The Nature and Duration of Petitioner’s Custody Do Not Violate the Due**
24 **Process Clause**

25 Petitioner is properly detained under 8 U.S.C. § 1231. An alien ordered removed
26 must be detained for 90 days pending the government’s efforts to secure the alien’s
27 removal. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien during
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1 the 90-day removal period). The statute “limits an alien’s post-removal detention to a
2 period reasonably necessary to bring about the alien’s removal from the United States”
3 and does not permit “indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678, 689
4 (2001). The Supreme Court has held that a six-month period of post-removal detention
5 constitutes a “presumptively reasonable period of detention.” *Id.* at 683. Release is not
6 mandated after the expiration of the six-month period unless “there is no significant
7 likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

8 In *Zadvydas*, the Supreme Court held: “[T]he habeas court must ask whether the
9 detention in question exceeds a period reasonably necessary to secure removal. It should
10 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
11 *assuring the alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added).
12 In so holding, the court recognized that detention is presumptively reasonable pending
13 efforts to obtain travel documents, because the noncitizen’s assistance is needed to
14 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
15 warrant of removal becomes a significant flight risk, especially if he or she is aware that
16 it is imminent.

17 The court also held that the detention could exceed six months: “This 6-month
18 presumption, of course, does not mean that every alien not removed must be released
19 after six months. To the contrary, an alien may be held in confinement until it has been
20 determined that there is no significant likelihood of removal in the reasonably
21 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
22 reason to believe that there is no significant likelihood of removal in the reasonably
23 foreseeable future, the Government must respond with evidence sufficient to rebut that
24 showing and that the noncitizen has the initial burden of proving that removal is not
25 significantly likely.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the
26 burden on the alien to show, after a detention period of six months, that there is ‘good
27 reason to believe that there is no significant likelihood of removal in the reasonably
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1 foreseeable future.” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting
2 *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

3 Petitioner’s case is premature as the six-month presumptively reasonable removal
4 period has not lapsed. *See Tumasov v. Doe 1*, No. 25-cv-2704-AGS-JLB, 2025 WL
5 3171897 (S.D. Cal. Nov. 13, 2025); *Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL),
6 2025 WL 3089522, at *3 (S.D. Cal. Nov. 5, 2025) (finding habeas petition was unripe
7 for review where *Zadvydas* six-month period had not expired; dismissing petition
8 without prejudice); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609–10 (E.D. Va. 2006) (same);
9 *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM), 2012 WL 6111358, at *4–5
10 (C.D. Cal. Nov. 5, 2012) (same); *Waraich v. Ashcroft*, No. CVF051036RECSMSHC,
11 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*,
12 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did the *Zadvydas* Court
13 preclude a noncitizen from challenging their detention before the end of the
14 presumptively reasonable six-month period.”).

15 Even if the removal period had extended beyond six months, Petitioner cannot
16 show that there is no significant likelihood of removal in the reasonably foreseeable
17 future. *See Meraz Decl.* at ¶ 13. ICE is in the process of identifying a third country for
18 Petitioner’s removal, so it is premature for Petitioner to seek administrative or judicial
19 review of that process. On this record, Petitioner cannot sustain his burden, and it would
20 be premature to reach that conclusion before permitting ICE an opportunity to complete
21 its diligent efforts to effect Petitioner’s removal.

22 Additionally, in a tacit acknowledgement that his removal to a third country is at
23 least *possible*, Petitioner also claims that he will be denied due process when a third
24 country is identified. ECF No. 1 at 15-18. On the contrary, when ICE identifies a third
25 country for removal, Petitioner will be notified in writing of the third country at least
26 24 hours prior to removal. *Meraz Decl.* at ¶ 11. Additionally, if Petitioner claims a fear
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1 of removal to the identified country, he will be referred to an asylum officer for
2 processing of the fear-based claim. *Id.*

3 When a third country is identified for resettlement, standard ICE guidance and
4 procedures provide that an ICE officer will provide written notice to the removable alien
5 of the intended third country removal. Meraz Decl. at ¶ 12. The written notice identifies
6 the country to which ICE intends to remove the alien. *Id.* ICE will generally wait at least
7 24 hours following service of the Notice of Removal before effectuating removal. In
8 exigent circumstances, ICE may execute a removal order six or more hours after service
9 of the Notice of Removal as long as the alien is provided reasonable means and
10 opportunity to speak with an attorney prior to removal. *Id.*

11 Petitioner does not challenge his removal order—nor could he. With Petitioner’s
12 removal likely to occur in the reasonably foreseeable future, no purpose would be
13 served by this Court’s ordering his release—other than frustrating “the statute’s basic
14 purpose, namely, assuring the alien’s presence at the moment of removal.” *Zadvydas*,
15 533 U.S. at 699.

16 IV. CONCLUSION

17 For the foregoing reasons, Respondents respectfully request that the Court
18 dismiss the habeas petition.

19 DATED: January 14, 2026

20 Respectfully submitted,

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22 United States Attorney

23
24 *s/ Tom Merritt*
25 _____
26 TOM MERRITT
27 Assistant United States Attorney
28 Attorney for Respondents