

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HABIB ABDOULAYE,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00078-JLR

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
January 28, 2026.

I. INTRODUCTION

This Court should deny Petitioner Habib Abdoulaye's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges the constitutionality and lawfulness of his post-order detention at the Northwest ICE Processing Center ("NWIPC") while he awaits removal from the United States. His removal, however, is not speculative—it is both likely and imminent. ICE has secured a valid travel document from Petitioner's home country of Liberia and is actively coordinating his placement on an upcoming removal flight.

Although the Petition devotes substantial discussion to issues surrounding re-detention and third-country removal, those arguments are inapplicable here. There is no evidence that Petitioner was ever released on an order of supervision ("OSUP"), and therefore no basis to claim

1 that such an order was revoked. Likewise, there is no evidence that ICE intends to remove
2 Petitioner to a third country. To the contrary, ICE has obtained a travel document from Liberia
3 and is working to effectuate Petitioner's removal on the next available flight.

4 Accordingly, Federal Respondents respectfully request that the Court deny the Petition.
5 This Return is supported by the pleadings and documents on file in this case, as well as the
6 Declaration of Deportation Officer Gennadiy Baz ("Baz Decl.") and the Declaration of Alixandria
7 K. Morris ("Morris Decl."), with accompanying exhibits. No evidentiary hearing is necessary.

8 II. FACTUAL AND PROCEDURAL BACKGROUND

9 A. Post-Order Detention

10 The INA governs the detention and release of noncitizens during and following their
11 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
12 detention periods are generally referred to as "pre-order" (meaning before the entry of a final
13 order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of
14 removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a)
15 (authorizing post-order detention).

16 When a final order of removal has been entered, a noncitizen enters a 90-day "removal
17 period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
18 "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence
19 for removal and to protect the community from dangerous noncitizens while removal is being
20 effected, Congress mandated detention:

21 During the removal period, the [Secretary of Homeland Security] shall detain the
22 [noncitizen]. Under no circumstance during the removal period shall the
23 [Secretary] release [a noncitizen] who has been found inadmissible under section
24 212(a)(2) or 212(a)(3)(B) of this title or deportable under section 237(a)(2) or
237(a)(4)(B) of this title.

8 U.S.C. § 1231(a)(2).

1 Section 1231(a)(6) authorizes DHS to continue detention of noncitizens after the
2 expiration of the removal period. Unlike § 1231(a)(2), § 1231(a)(6) does not mandate detention
3 and does not place any temporal limit on the length of detention under that provision:

4 [A noncitizen] ordered removed who is inadmissible under section 212, removable
5 under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of this title or who has been
6 determined by the [the Secretary of Homeland Security] to be a risk to the
community or unlikely to comply with the order of removal, may be detained
beyond the removal period and, if released, shall be subject to the terms of
supervision in paragraph (3).

7 8 U.S.C. § 1231(a)(6) (emphasis added).

8 Pertinent to this case, the removal period may also be extended if a noncitizen “fails or
9 refuses to make timely application in good faith for travel or other documents necessary to the
10 [noncitizen’s] departure or conspires or acts to prevent the [noncitizen’s] removal subject to an
11 order of removal.” 8 U.S.C. § 1231(a)(1)(C). In that instance, the removal period is extended
12 until the noncitizen complies with his statutory obligations to cooperate. 8 C.F.R. §
13 241.4(g)(1)(ii). Once the noncitizen has complied, ICE “shall have a reasonable period of time
14 in order to affect the [noncitizen’s] removal.” *Id.*

15 During the removal period, ICE is charged with attempting to effectuate removal of a
16 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time
17 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen
18 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s]
19 removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further
20 identified six months as a presumptively reasonable time necessary to bring about a noncitizen’s
21 removal. *Id.*, at 701.

22 **B. Petitioner Habib Abdoulaye**

23 The Petitioner is a native of Ivory Coast and a citizen of Liberia. On or about March 23,
24

1 2004, the Petitioner was admitted to the United States as an accompanied child of an alien
2 classified as RE1 (refugee). Baz Decl. ¶ 4. On April 19, 2006, the Petitioner adjusted his status to
3 that of a lawful permanent resident. *Id.* On November 19, 2020, the Petitioner pled guilty and was
4 convicted in Pima County, Arizona, for Burglary in the Second Degree under Arizona Revised
5 Statutes § 13-1507(A) and was placed on 3 years of probation. *Id.* ¶ 5.

6 On June 16, 2022, the Petitioner was convicted in the United States District Court for the
7 District of Arizona for violating 8 U.S.C. § 1324(a)(1)(A)(ii) and (a)(1)(B)(iii) (transportation of
8 unauthorized aliens for commercial advantage or private financial gain). *Id.* ¶ 6. He was sentenced
9 to 12 months and 1 day of confinement, followed by 3 years of supervised release. *Id.* On January
10 13, 2023, the Petitioner was arrested by the Pima County Sheriff's Department on a felony
11 warrant for probation violation. *Id.* ¶ 7.

12 On January 20, 2024, after serving one year of confinement, the Petitioner was released
13 from criminal custody and turned over to ICE for removal proceedings. *Id.* ¶ 8. On the same date,
14 DHS served the Petitioner with a Notice to Appear (NTA) charging removability under INA §
15 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony.
16 *Id.*; Morris Decl., Exs. 1-2 (Notice to Appear; I-213). On January 20, 2024, the Petitioner was
17 detained under INA § 236(c), 8 U.S.C. § 1226(c) (mandatory detention for criminal aliens), and
18 a Warrant for Arrest of Alien (Form I-200) was issued. Baz Decl. ¶ 9.

19 On January 28, 2025, an Immigration Judge ordered the Petitioner removed to Liberia or,
20 in the alternative, to Ivory Coast. *Id.* ¶ 10; Morris Decl., Ex. 3. The Petitioner appealed the
21 Immigration Judge's decision to the Board of Immigration Appeals (BIA). Baz Decl. ¶ 10. On
22 June 10, 2025, the BIA dismissed the Petitioner's appeal, rendering the removal order final. *Id.*
23 ¶ 11.

Following the final order, ICE ERO initiated a request for travel documents from Liberia. *Id.* ¶ 12. On December 12, 2025, the Petitioner was interviewed by the Liberian consulate. *Id.* On January 16, 2026, travel documents for Liberia were issued¹. *Id.* ¶ 13. The Petitioner is currently awaiting removal to Liberia, with arrangements being coordinated for the next available removal flight.² *Id.* The Petitioner's continued detention is appropriate under INA § 241(a) to effectuate his imminent removal. *Id.* ¶ 14; *see also* 8 U.S.C. § 1231(a). There is a significant likelihood of removal in the reasonably foreseeable future, as travel documents have been secured and logistical preparations are underway. Baz Decl. ¶ 14.

III. ARGUMENT

A. Petitioner's Administrative Procedure Act claims must be dismissed for lack of Subject Matter Jurisdiction

Petitioner seeks to challenge his detention on grounds that it violates Sections 706(2)(A), (B) and (C) of the Administrative Procedure Act (APA). The Court has no subject matter jurisdiction to hear these claims.

Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review.") (emphasis added). Simply put, "federal courts lack jurisdiction over APA challenges whenever Congress has provided another 'adequate remedy.'" *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*

¹ Petitioner's counsel has been provided with a copy of Petitioner's travel document. Morris Decl. ¶ 3.

² On Thursday, January 22, 2026 at 3:00 p.m., Federal Respondents' provided Petitioner's counsel with the requisite 72-hours notice in accordance with this Court's order (Dkt. 3) and provided Petitioner's counsel with a copy of the travel document. Morris Decl. ¶ 3. Petitioner's counsel confirmed receipt of the notice at 5:06 p.m. and confirmed receipt of the travel document at 6:32 p.m. *Id.*

1 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’
 2 claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the
 3 “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their
 4 confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the
 5 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
 6 which states that claims under the APA are not available when there is another ‘adequate remedy
 7 in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.”
 8 *Id.* at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
 9 “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); *and*
 10 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
 11 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
 12 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

13 Moreover, to be reviewable under the APA an action must be a “final agency action,”
 14 which is to say that it is the “consummation of the agency’s decision making process.” *See Bennett*
 15 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a
 16 removal order is not within that category because it is only an intermediary step in the process.
 17 *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly,
 18 Petitioner’s claims based on alleged APA should be denied.

19 **B. Petitioner’s detention is not indefinite, and his removal is imminent**

20 Petitioner argues that his detention is unlawful in violation of *Zadvydas*. The burden is on
 21 Petitioner to show that there is “good reason to believe that there is no significant likelihood of
 22 removal in the reasonably foreseeable future.” *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir.
 23 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then
 24 introduce evidence to refute the petitioner’s assertion. *Id.*

1 In *Zadvydas*, the Supreme Court noted the six-month “presumptively reasonable” post-
2 order detention period “does not mean that every [noncitizen] not removed must be released after
3 six months. 533 U.S. at 701. To the contrary, [a noncitizen] may be held in confinement until it
4 has been determined that there is no significant likelihood of removal in the reasonably
5 foreseeable future.” *Id.* The *Zadvydas* Court recognized that as the length of detention grows, a
6 sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order
7 detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal
8 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to
9 shrink”).

10 However, the Supreme Court determined that it is “presumptively reasonable” for the
11 Government to detain a noncitizen for six months following entry of a final removal order, while
12 it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court
13 implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could
14 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
15 “does not mean that every [noncitizen] not removed must be released after six months. To the
16 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
17 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

18 Here, there is no dispute that the presumptively reasonable period has passed.³ Petitioner’s
19 order of removal became administrative final on June 10, 2025. Baz Decl. ¶ 11. Yet Petitioner
20 fails to demonstrate that there is good reason to believe that there is no significant likelihood of
21 removal in the reasonably foreseeable future. Pet., pgs. 6-7. Petitioner’s claims regarding

22
23 ³ Federal Respondents acknowledge that this has held that the presumptively reasonable period expires six months
24 after a final order, regardless of detention. See *Tran v. Bondi*, No. CV-25-01897-JLR, 2025 WL 3140462 (W.D.
Wash. Nov. 10, 2025); but see *Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *3, n.2
(W.D. Wash. Dec. 15, 2025). However, Federal Respondents believe that holding is immaterial to the facts in the
present petition.

1 cooperation with Liberia are not based on any facts, and Petitioner provides no evidence that
2 Liberia is unwilling to cooperate. *Id.* On the contrary, ICE obtained a travel document to Liberia
3 for Petitioner. Baz Decl. ¶ 13. ICE is solely working to coordinate arrangements for the next
4 available removal flight. *Id.* Under these facts, Petitioner's removal is not only likely, it's
5 imminent. Thus, Petitioner's detention has not become unconstitutionally indefinite under
6 *Zadvydas*. Accordingly, Petitioner has failed to meet his burden, and the Petition should be
7 denied.

8 **C. Petitioner's Re-detention and Regulatory Claims are Without Merit**

9 Petitioner argues that he has a regulatory and due process right not to be redetained
10 following the revocation of an order of supervision ("OSUP"). Pet., pgs. 7–12. However,
11 Petitioner presents no evidence that he was ever released on an OSUP or that any such order was
12 revoked. *See* Pet., pgs. 6, 7–12. Indeed, Federal Respondents are unaware of Petitioner ever
13 having been released on an OSUP. *See generally* Baz Decl. Accordingly, no OSUP could have
14 been revoked, and Petitioner's arguments concerning revocation of an OSUP are inapplicable
15 here.

16 **D. Petitioner's Third Country Claims Are Without Merit and Not Ripe for Review**

17 Petitioner presents no evidence of any intention by ICE to remove Petitioner to a third
18 country. *See* Pet., pgs. 12-19. Petitioner purports to bring claims challenging the constitutionality
19 of his possible removal to a third country as a likely violation of the Fifth Amendment, 8 U.S.C.
20 § 1231, the Eighth Amendment, the Convention Against Torture, the INA, the APA, and relevant
21 implementing regulations. *Id.* Such claims are based on the hypothetical scenario of his removal
22 to a third country other than Liberia, which are entirely speculative and not ripe for review.
23 Petitioner has a removal order to Liberia. Morris Decl., Ex. 3. ICE has obtained a travel document
24 solely for Liberia. Baz Decl. ¶ 13. ICE is currently working to coordinate the next available

1 removal flight to Liberia. *Id.* ¶ 13. There is no case or controversy because there is no concrete
2 indication that removal to any third country will occur.

3 In any event, this Court has found that such claims are not the proper subject of an
4 immigration habeas petition, considering that Petitioner presents no evidence that Federal
5 Respondents seek to remove him to a third country. *See Tran*, 2025 WL 3140462, at *4 (citing
6 *Zadvydas*, 533 U.S. at 688).

7 Accordingly, Petitioner's claims are speculative and not part of a live controversy because
8 there is no concrete indication that removal to a third country will occur. Thus, these claims should
9 be dismissed.

10 IV. CONCLUSION

11 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
12 the Petition.

13 Dated this 23rd day of January, 2026.

14 Respectfully submitted,

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I certify that this memorandum contains 2,570
words, in compliance with the Local Civil Rules.