

1 ADAM GORDON
United States Attorney
2 ROBBIN O. LEE
Assistant U.S. Attorney
3 New York Bar No. 5738067
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Tel: (619) 546-6987
Fax: (619) 546-7751
6 Email: Robbin.Lee@usdoj.gov

7 Attorneys for Respondents

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 IVAN KRASNOPOLKSII,

12
13 Petitioner,

14 v.

15 WARDEN, OTAY MESA DETENTION
16 CENTER,

17 Respondent.

Case No.: 26-cv-00383-RBM-SBC

**RETURN IN OPPOSITION TO
HABEAS PETITION**

18
19
20
21
22
23
24
25
26
27
28

1 I. INTRODUCTION

2 *Pro se* Petitioner filed a habeas petition advancing the following arguments: (i)
3 he is unlawfully detained; (ii) his detention violates due process because he was not
4 given a meaningful opportunity to explain his fears and did not knowingly waive his
5 rights; (iii) he is detained despite ongoing fear of persecution and torture; and (iv) that
6 his continued detention serves no purpose (i.e., is arbitrary and punitive). *See* ECF No.
7 1, at 6-7. For the reasons set forth below, Respondents request that the Court deny the
8 petition.

9 II. BACKGROUND¹

10 Petitioner is a native and citizen of Russia. On January 7, 2022, Petitioner was
11 paroled into the United States. On February 20, 2022, Petitioner was served with a
12 Notice to Appear (NTA) charging him with inadmissibility under the Immigration and
13 Nationality (INA) Act § 212(a)(6)(A)(i) in that, he was an alien present without being
14 admitted or paroled, or who arrived at any time or place other than designated, and
15 212(a)(7)(A)(i)(I) as an immigrant not in possession of a valid entry document at the
16 time of application for admission.

17 On April 19, 2022, Petitioner left the United States and returned to Russia. On
18 May 20, 2023, Petitioner again applied for admission to the United States. Petitioner
19 was served with a new NTA charging him with inadmissibility under INA §
20 212(a)(7)(A)(i)(I). On December 14, 2023, DHS filed an amendment to the NTA to add
21 or substitute factual allegations.

22 On March 31, 2025, an Immigration Judge (IJ) ordered Petitioner removed to
23 Russia but granted him protection under the Convention Against Torture as to Russia.
24 Petitioner filed an appeal of the IJ's decision with the Board of Immigration Appeals
25 (BIA). Before BIA could act on Petitioner's appeal, however, on November 20, 2025,
26 Petitioner voluntarily departed the United States. He went to Africa, traveling further to
27

28 ¹ *See* Declaration of Deportation Officer Rosendo Martinez.

1 Brazil and Mexico before returning to the United States and applying for admission on
2 December 21, 2025, at the Otay Mesa, California Port of Entry.

3 Because the BIA had not yet issued a decision on Petitioner's appeal of the IJ's
4 March 31, 2025 order, Petitioner's departure from the United States on November 20,
5 2025 constituted a withdrawal of the appeal, and the IJ's order became final on March
6 31, 2025, pursuant to 8 C.F.R. § 1003.4.²

7 Since Petitioner's detention on December 21, 2025, ICE has worked as
8 expeditiously as possible to identify a third country to which Petitioner may be removed.
9 On January 14, 2026, ICE contacted ERO Removal and International Operations (RIO)
10 headquarters to seek a third country for removal. ICE is pending further response from
11 RIO on identifying a third country for removal. When a third country is identified for
12 resettlement, standard ICE guidance and procedures provide that an ICE officer will
13 provide written notice to the removable alien of the intended third country removal. The
14 written notice identifies the country to which ICE intends to remove the alien. ICE will
15 generally wait at least 24 hours following service of the Notice of Removal before
16 effectuating removal. In exigent circumstances, ICE may execute a removal order six
17 or more hours after service of the Notice of Removal as long as the alien is provided
18 reasonable means and opportunity to speak with an attorney prior to removal.

19 Once a third country is identified, ICE will provide Petitioner with written notice,
20 and if Petitioner claims a fear of removal to the identified country, he will be referred
21 to an asylum officer for processing of the fear-based claims. ICE continues to diligently
22

23 ² Most relevant here, the regulation states the following: "In any case in which an appeal
24 has been taken, the party taking the appeal may file a written withdrawal thereof with
25 the office at which the notice of appeal was filed [with the Board of Immigration
26 Appeals]... Departure from the United States of a person who is the subject of
27 deportation or removal proceedings, except for arriving aliens as defined in §
28 1001.1(q) of this chapter, subsequent to the taking of an appeal, but prior to
a decision thereon, shall *constitute a withdrawal of the appeal*, and the
initial decision in the case shall be final to the same extent as though no appeal had been
taken." (emphasis added).

1 seek to identify a third country for Petitioner’s removal and believes there is a
2 significant likelihood of removal to a third country in the reasonably foreseeable future.

3 III. ARGUMENT

4 A. Claims and Requests Barred by 8 U.S.C. § 1252.

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

24 Here, Petitioner’s claims relating to an allegedly inadequately opportunity to
25 explain his credible fear (Ground II) and detention despite ongoing fear of persecution
26 and torture (Ground III) necessarily arise “from the decision or action by the Attorney
27 General to . . . execute removal orders,” over which Congress has explicitly foreclosed
28 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)

1 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any
2 alien pursuant to a final order under this section unless the alien shows by clear and
3 convincing evidence that the entry or execution of such order is prohibited as a matter
4 of law.”).

5 Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—the
6 decision to execute his removal order, the Court should deny and dismiss those claims
7 for lack of jurisdiction under 8 U.S.C. § 1252.

8 **B. Petitioner is Lawfully Detained**

9 Authority to detain noncitizens who are subject to a final order of removal is
10 governed by 8 U.S.C. § 1231(a). *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
11 detain” the alien during the 90-day removal period); *see also Zadvydas v. Davis*, 533
12 U.S. 678, 683 (2001).

13 Petitioner cannot dispute that he is subject to a final, executable order of removal,
14 which means that he has no right to remain in the United States. He has a temporary
15 right not to be repatriated to Russia, but he has no right *not* to be resettled in a third
16 country. ICE has long-standing authority to remove noncitizens and resettle them in
17 third countries where removal to the country designated in the final order is
18 “impracticable, inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8
19 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like
20 Petitioner, who have received protection against removal to the designated country
21 (either withholding of removal under 8 U.S.C. § 1231(b)(3) or Convention Against
22 Torture protection), may be removed and resettled in third countries.

23 Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall
24 remove the noncitizen to any of the following countries:

- 25 (i) The country from which the alien was admitted to the United States.
26 (ii) The country in which is located the foreign port from which the alien
27 left for the United States or for a foreign territory contiguous to the
28 United States.
(iii) A country in which the alien resided before the alien entered the
country from which the alien entered the United States.

- 1 (iv) The country in which the alien was born.
- 2 (v) The country that had sovereignty over the alien's birthplace when
- 3 the alien was born.
- 4 (vi) The country in which the alien's birthplace is located when the alien
- 5 is ordered removed.
- 6 (vii) If impracticable, inadvisable, or impossible to remove the alien to
- 7 each country described in a previous clause of this subparagraph,
- 8 another country whose government will accept the alien into that
- 9 country.

10 *Id.*

11 Accordingly, if the Secretary of Homeland Security is unable to remove a
12 noncitizen to a country of designation or an alternative country in subparagraph (D), the
13 Secretary may, in her discretion, remove the noncitizen to any country listed in
14 subparagraphs (E)(i) through (E)(vi).

15 An alien ordered removed must be detained for 90 days pending the
16 government's efforts to secure the alien's removal through negotiations with foreign
17 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien
18 during the 90-day removal period); *see also Zadvydas*, 533 U.S. at 683. The statute
19 "limits an alien's post-removal-period detention to a period reasonably necessary to
20 bring about the alien's removal from the United States" and "does not permit indefinite
21 detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a six-month
22 period of post-removal detention constitutes a "presumptively reasonable period of
23 detention." *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005) ("[T]he
24 presumptive period during which the detention of an alien is reasonably necessary to
25 effectuate his removal is six months . . ."); *Lema v. INS*, 341 F.3d 853, 856 (9th Cir.
2003). Consequently, when the six-month presumptively reasonable period has not
26 ended, courts have dismissed petitions for being premature.³

27 ³ *Ali v. Barlow*, 446 F. Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding habeas petition
28 was unripe for review where *Zadvydas* six-month period had not expired; dismissing
petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM),
2012 WL 6111358, at *4–5 (C.D. Cal. Nov. 5, 2012), *adopted by* 2012 WL 6131298
(C.D. Cal. Dec. 10, 2012) (reasoning that the petitioner's claims were not ripe for

1 Here, Petitioner’s argument that his current detention is unlawful lacks merit
2 (Ground I). Petitioner’s order of removal became final after he voluntarily departed the
3 United States on November 20, 2025 while he had a pending appeal before BIA, but
4 before BIA could act on his appeal. ICE therefore had an independent statutory
5 permissible detention under § 1231(a)(6) to detain him when it encountered him on
6 December 21, 2025, after he applied for admission at the Otay Mesa Port of Entry. *See*
7 *Lin v. Francis*, 25-cv-100001 (PAE), 2025 WL 3751855 (S.D.N.Y. Dec. 29, 2025)
8 (reasoning that, because there was a valid final order of removal, ICE “had statutory
9 authority [under 8 U.S.C. § 1231(a)(6)] to detain Lin without notice when it encountered
10 Lin at LaGuardia Airport.”).

11 Even if the Court were to liberally construe the Petition as challenging the
12 determination that his voluntary departure constituted a knowing and voluntary
13 withdrawal of his appeal with BIA, there is no indication that Petitioner has moved to
14 reopen his removal proceedings or otherwise administratively challenged the
15 determination that his appeal with BIA has been withdrawn. Exhaustion therefore
16 applies. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (holding a
17 petitioner “must exhaust administrative remedies before raising ... constitutional claims
18 in a habeas petition when those claims are reviewable by the BIA on appeal ...
19 ‘The exhaustion requirement avoids premature interference with the agency’s processes
20 and helps to compile a full judicial record.’”).

21 As for Ground IV, Petitioner is being detained under § 1231, and thus his
22 immigration detention for less than two months does not offend due process. Critically,
23

24 _____
25 review); *Albarado v. Holder*, 1:11-cv-00125-JLT-HC, 2011 WL 345965, at *2 (E.D.
26 Cal. Feb. 2, 2011) (denying petition because “Petitioner’s current detention is still well
27 within the six month ‘presumptively reasonable period of detention’ under *Zadyvdas*”);
28 *but see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did
the *Zadyvdas* Court preclude a noncitizen from challenging their detention before the
end of the presumptively reasonable six-month period.”).

1 the “six-month ‘presumptively reasonable period of detention’ under *Zadvydas*” only
2 begins to accrue—post final order of removal—when the Petitioner is actually
3 “detained by ICE.” See *Jiang v. Bondi*, No. 25-cv-0922, 2025 WL 3281819, at *2
4 (D.N.M. Nov. 25, 2025). This result is compelled not only by the language in *Zadvydas*
5 but also by its logic.” See *Callender v. Shanahan*, 281 F. Supp. 3d 428, 435 (S.D.N.Y.
6 2017). As a result, “Petitioner’s contention that the *Zadvydas* clock runs while he is not
7 in custody ‘defies common sense.’” *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d
8 331, 335 fn. 8 (D. Mass. 2017).

9 Here, Petitioner does not allege to have spent any time in post-removal detention
10 (besides his current detention arising from his December 21, 2025 admission into the
11 United States). The six-month presumptive period therefore expires on June 21, 2026.
12 His current detention falls within the presumptive period, and the Court should deny
13 habeas relief without prejudice, thereby permitting ICE and RIO a reasonable period of
14 time to actively work towards effectuating his removal. See *Ao v. Noem*, No. 25-cv-
15 3256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) (denying without
16 prejudice petition in third country removal case within the six month presumptive
17 period); *Muradyan v. Warden, Otay Mesa Detention Center*, 3:26-cv-00063-CAB-
18 AHG, 2026 WL 184206, at *2 (S.D. Cal. Jan. 23, 2026) (“Given Petitioner has been in
19 detention for less than six months, Petitioner does not meet his burden.”).

20 Even after the period of presumptive reasonableness has run, release is not
21 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
22 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
23 Supreme Court instructed, “the habeas court must ask whether the detention in question
24 exceeds a period reasonably necessary to secure removal. It should measure
25 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
26 *alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added). In so holding,
27 the Supreme Court recognized that detention is presumptively reasonable pending
28 efforts to obtain travel documents, because the noncitizen’s assistance is often needed

1 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
2 executable warrant of removal becomes a significant flight risk, especially if he or she
3 is aware that it is imminent.

4 The Supreme Court also instructed that detention could exceed six months: “This
5 6-month presumption, of course, does not mean that every alien not removed must be
6 released after six months. To the contrary, an alien may be held in confinement until it
7 has been determined that there is no significant likelihood of removal in the reasonably
8 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
9 reason to believe that there is no significant likelihood of removal in the reasonably
10 foreseeable future, the Government must respond with evidence sufficient to rebut that
11 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
12 alien to show, after a detention period of six months, that there is ‘good reason to believe
13 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
14 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
15 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

16 Here, RIO is still in the process of obtaining travel documents from a third
17 country for the Petitioner. *See also Zadvydas*, 533 U.S. at 700 (instructing district courts
18 “to listen with care when the Government’s foreign policy judgments, including, for
19 example, the status of repatriation negotiations, are at issue, and to grant the
20 Government appropriate leeway when its judgments rest upon foreign policy
21 expertise.”).

22 In any event, the law does not require that “every [noncitizen] not removed must
23 be released after six months.” *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court
24 was clear that the Constitution prevents only “indefinite” or “potentially permanent”
25 detention. *Id.* at 689–91. Courts properly deny *Zadvydas* claims under such
26 circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1
27 (W.D. Wash. April 2, 2008) (denying *Zadvydas* petition where petitioner had been
28 detained more than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No.

1 C13-0092-RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding
2 petitioner “failed to satisfy his burden of showing that there is no significant likelihood
3 of his removal in the reasonably foreseeable future” where he had been detained more
4 than seven months post-final order).

5 This logic applies with equal force here. Even if Petitioner subjectively believes
6 his removal is doubtful, he cannot dispute that ICE is actively seeking removal of
7 Petitioners to a third country. Petitioner was only recently detained on December 21,
8 2025. ICE contacted ERO HQ to seek a third country for removal, and ICE is awaiting
9 a response from RIO on identifying a third country. Martinez Decl. at ¶¶ 12-14.

10 Petitioner would have this Court impose a heightened requirement on
11 Respondents that ICE must secure a travel document or a departure flight or else there
12 is no significant likelihood of removal in the reasonably foreseeable future. But the lack
13 a specific date of anticipated removal does not make their detention unconstitutionally
14 indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (explaining that
15 a demonstration of “no significant likelihood of removal in the reasonably foreseeable
16 future” would include a country’s refusal to accept a noncitizen or that removal is barred
17 by our own laws). On the contrary, as courts in this district have found, “evidence of
18 progress, albeit slow progress, in negotiating a petitioner’s repatriation will satisfy
19 *Zadvydas* until the petitioner’s detention grows unreasonably lengthy.” *Kim v. Ashcroft*,
20 Case No. 02-cv-1524-J-LAB, ECF No. 25 at 8:8-10 (S.D. Cal. June 2, 2003) (finding
21 that petitioner’s one year and four-month detention does not violate *Zadvydas* given
22 respondent’s production of evidence showing governments’ negotiations are in progress
23 and there is reason to believe that removal is likely in the foreseeable future); *see also*
24 *Marquez v. Wolf*, No. 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct.
25 13, 2020) (denying petition because “Respondents have set forth evidence that
26 demonstrates progress and the reasons for the delay in Petitioner’s removal”), *Sereke v.*
27 *DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4-6 (S.D. Cal. Aug. 15, 2019)

28

1 (“[T]he record at this stage in the litigation does not support a finding that there is no
2 significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”).

3 Petitioners’ continued detention is thus not unconstitutionally prolonged under
4 *Zadvydas*. Petitioner’s argument that he does not pose a danger to the public or is not a
5 flight risk is immaterial. He was detained by ICE under § 1231 after his removal order
6 became final, so no prior notice is required and there is no requirement of pre-
7 deprivation hearing. *See Lin*, 2025 WL 3751855, at *4 (stating nothing in § 1231(a)(6)
8 textually requires ICE to give advance notice before detaining a noncitizen when the
9 individual was never released on supervision or conditions *after* the 90 day removal
10 period expired). Here, the Petitioner does not allege that after his removal order became
11 final, that he was released on bond or supervision. On the contrary, he departed the
12 United States and was detained immediately pursuant to § 1231 upon his return.

13 Relatedly, the argument that the Petitioner’s current detention is “arbitrary” or
14 “punitive” rather than “administrative” lacks any basis. Such conclusory allegations
15 should be dismissed. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th
16 Cir. 2001) (stating that on a motion to dismiss, the court is not “required to accept as
17 true allegations that are merely conclusory, unwarranted deductions of fact, or
18 unreasonable inferences”).

19 Because the record shows that Petitioner is not entitled to habeas relief, there is
20 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.
21 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise
22 precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the requests for relief and dismiss the petition.

DATED: February 12, 2026

ADAM GORDON
United States Attorney

s/ Robbin O. Lee
ROBBIN O. LEE
Assistant United States Attorney
Attorneys for Respondents