

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAD ALWAWI, 	)	CASE NO.: 3:26-cv-00375-JRK
	)	
Petitioner,	)	JUDGE JAMES R. KNAPP II
	)	
	)	MAGISTRATE JUDGE JAMES E.
	)	GRIMES JR.
v.	)	
	)	
KRISTI NOEM, Secretary of the U.S.	)	<u>RESPONSE TO PETITION FOR WRIT OF</u>
Department of Homeland Security, et al.,	)	<u>HABEAS CORPUS</u>
	)	
Respondents.	)	

Petitioner Jad Alwawi (“Petitioner”) seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement (“ICE”) and seeking his immediate release from custody or an Order directing the Immigration Court to hold a bond hearing. Because this Court lacks jurisdiction, Petitioner failed to exhaust administrative remedies, and Petitioner’s detention is lawful and constitutional, his petition must be denied.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Jad Alwawi is a citizen of Palestine. ECF No. 1, Petition ¶ 14, PageID # 3. He arrived in the United States on or about November 12, 2014, as a nonimmigrant tourist for pleasure, with permission to remain in the United States until May 11, 2015. *Id.* ¶ 15; Ex. A,

¹ A writ of habeas corpus may only be issued by the person having custody of the detainee. In the ICE habeas context, that person is the Field Office Director for ICE. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Therefore, Secretary Noem and Attorney General Bondi are not proper respondents. *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796, *8 (N.D. Ohio Nov. 12, 2025).

Declaration of Suha Peng (“Peng Decl.”), ¶ 5. On December 27, 2016, Petitioner’s former spouse filed Form I-130, Petition for Alien Relative, on petitioner’s behalf with the United States Citizenship and Immigration Services (“USCIS”). Ex. A, Peng Decl. ¶ 7. At the same time, Petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status with USCIS. *Id.* ¶ 8. Petitioner withdrew his Form I-485 on or about September 27, 2018, and USCIS denied the Form I-130 on or about October 3, 2018. *Id.* ¶¶ 9-10. On February 12, 2021, Petitioner filed another form I-485 and Petitioner’s new spouse filed another Form I-130 on petitioner’s behalf with USCIS. *Id.* ¶¶ 11-12. These forms were both denied on April 22, 2022. *Id.* ¶¶ 13-14. On May 20, 2022, Petitioner filed form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer with the Board of Immigration Appeals (“BIA”). *Id.* ¶ 15. Petitioner’s appeal was dismissed on December 15, 2023. *Id.* ¶ 16.

On July 11, 2025, USCIS issued Form I-862, Notice to Appear to Petitioner. Ex. B, Form I-862, Notice to Appear. The Notice to Appear states that Petitioner has remained in the United States beyond the date he was authorized to and that he charged with being subject to removal pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act (“INA”). *Id.* Petitioner was ordered to appear before an immigration judge on August 19, 2025. *Id.* Petitioner failed to appear for this removal hearing and was consequently ordered removed to Jordan by the immigration court. Ex. C, Order of the Immigration Judge dated 8/19/2025. On September 26, 2025, Petitioner filed a Motion to Reopen with the immigration court that was denied on October 20, 2025. Ex. D, Motion to Reopen; Ex. E, Order of the Immigration Judge dated 10/20/2025. Petitioner filed form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, appealing the immigration judge’s order to the BIA on November 20, 2025. Ex. F, Form EOIR-

26, Notice of Appeal from a Decision of an Immigration Judge. His appeal to the BIA is due on March 17, 2026. Ex. G, Notice – Briefing Schedule.

Petitioner was taken into custody by ICE on January 6, 2026. ECF No. 1, Petition ¶ 1, PageID # 1. If this petition is denied, ICE intends to remove him pursuant to the August 19, 2025 removal order. Ex. A, Peng Decl. ¶¶ 25-26.

II. ARGUMENT

A. PETITIONER’S CLAIMS SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(B)(1)

1. 8 U.S.C. § 1252(g) bars review of Petitioner’s claims

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings* includes the decision to detain an alien pending such removal proceedings. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007))). Judicial review of the Petitioner’s claim, therefore, is barred by § 1252(g).

2. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“*AADC*”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.* Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review

of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

Recently, the Third Circuit in *Khalil v. President, United States*, --- F.4th ---, 2026 WL 111933 (3d Cir. Jan. 15, 2026), citing *AADC* and circuit precedent, held that Section 1252(b)(9) bars subject matter jurisdiction over habeas claims arising from actions to remove an alien, including those where the injury cannot be remedied after the fact – such as alleged illegal detention claims. 2026 WL 111933, at *9. To avoid getting channeled to petition for review, “[a] now-or-never claim must raise legal or factual *questions* that a court of appeals will not later be able to review meaningfully on a PFR;” “a claim must raise now-or-never *questions*, not now-or-never harms.” *Id.* (citing *Tazu*, 975 F.3d at 299). Addressing the dissent’s argument that the petition for review court cannot later redress harms, the majority stated that delay does not foreclose meaningful review, acknowledging “Congress has the power to balance concerns about the orderly adjudication of claims with concerns about remedying harms from illegal detentions[.]” and “[t]he balance that Congress struck in § 1252(b)(9) requires bringing legal questions later if they can be answered later.” *Id.*, at *10.

Applying *Khalil*, this Court lacks subject matter jurisdiction pursuant to § 1252(b)(9) in the within case because Petitioner’s claim does not raise a now-or-never question, but a now-or-never harm. Therefore, claims channeling to the petition of review prohibits this court from entertaining the habeas petition for illegal detention in this context. And as another Judge in this Court held:

[A] constitutional challenge to detention pending removal and entitlement to a bond hearing collapse into analysis of the statutory and regulatory regime—whether, for example, Section 1226(a) entitles an alien to bond pending removal or whether Section 1225(b) authorizes the government to detain an alien. Congress has made clear that district courts lack the jurisdiction to make such determinations, even on a habeas petition under Section 2241.

Amaya-Velis v. Raycraft, --- F. Supp. 3d ---, 2026 WL 100596, at *3 (N.D. Ohio Jan. 14, 2026) (citing 8 U.S.C. § 1252(b)(9)); *see also Munoz Nataren v. Raycraft*, No. 4:26cv212 (N.D. Ohio Jan. 28, 2026) (dismissing the petition for lack of jurisdiction).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 94–95 (2018) (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”). Here, Petitioner challenges the foreseeability of his detention, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [him] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024). As such, the Court lacks jurisdiction over

this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals, because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

In similar habeas petitions filed in this district, other judges have dismissed for failure to exhaust administrative remedies. *Amaya-Velis*, 2026 WL100596; *Tecum Pastor v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement*, --- F. Supp.3d --- (N.D. Ohio 2025), 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025); *Monroy Villalta v. Greene*, 794 F. Supp. 3d 528 (N.D. Ohio 2025); *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796 (N.D. Ohio Nov. 12, 2025); *Ba v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al.*, Case No. 4:25-cv-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025); *Laguna Espinoza v. Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al.*, Case No. 4:25-cv-02107, 2025 WL 2878173 (N.D. Ohio Oct. 9, 2025);

Hernandez Torrealba v. U.S. Dep't of Homeland Sec., No. 1:25-cv-01621, 2025 WL 2444114 (N.D. Ohio Aug. 25, 2025).

Here, Petitioner has not availed himself of the administrative remedies available to him. An immigration judge ordered his removal after he failed to appear at his hearing. Ex. C, Order of the Immigration Judge dated 8/19/2025. Petitioner's motion to reopen his removal proceedings is currently on appeal. Ex. G, Notice – Briefing Schedule. This Court should require that Petitioner exhaust his appeal to the BIA before pursuing the instant matter.

C. PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1231

ICE's detention authority stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days—this is known as the “removal period.” During the removal period, § 1231(a)(2) commands that ICE “shall detain” the final order alien. If the removal period has expired, ICE can either release an individual pursuant to an Order of Supervision as directed by Section 1231(a)(3) or continue detention under Section 1231(a)(6). Section 1231(a)(6) permits ICE to continue detention beyond the removal period for three categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or “unlikely to comply with the order of removal.”

Here, Petitioner's order of removal was final as of August 19, 2025. Although it is more than ninety days since that removal order, 8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because he is subject to removal pursuant 8 U.S.C. § 1227(a)(1)(B). ICE therefore has statutory

authority to detain Petitioner to effectuate his removal order from the United States.

D. PETITIONER'S STATUTORITY AUTHORIZED DETENTION IS CONSTITUTIONAL

Petitioner's claims that his "prolonged incarceration is unreasonable." ECF No. 1, Petition, ¶ 3, PageID #1. However, Petitioner's claim must fail because he has been detained for less than two months. As recognized by the Supreme Court, "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Here, it does.

To set forth a Constitutional violation for Section 1231 detention, an individual must satisfy the *Zadvydas* test. See *Chen v. Holder*, 389 F.App'x 468, 475 (6th Cir. 2010) (citing *Zadvydas* when explaining that due process "requires aliens in deportation hearings receive a full and fair hearing."); *Smith v. Simon*, Case No. 1:19CV41, 2019 WL 4143088, at *3-4 (N.D. Ohio July 17, 2019) (discussing the reasonable time limit for detentions as set forth in *Zadvydas*), report and recommendation adopted, 2019 WL 4142325 (N.D. Ohio Aug. 30, 2019); *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established"); *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003).

In *Zadvydas*, the Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period. 533 U.S. at 682. The Supreme Court "read an implicit limitation into the statute . . . in light of the Constitution's demands" and held that Section 1231(a)(6), "limits an alien's post-removal-period detention to a period reasonably

necessary to bring about the alien's removal from the United States." *Id.* at 689. The *Zadvydas* Court held that post-removal detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, the Supreme Court explained, an individual could file a habeas petition seeking release. *Id.* at 700-01. In such petition, the individual must show there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Id.* at 701. If the individual does so, the burden would then shift to the government to produce "evidence sufficient to rebut that showing." *Id.*

Petitioner's due process claim fails because any *Zadvydas* challenge cannot be raised until he has been detained for six months in post-final order custody, but he has been detained for less than two months. "Courts have consistently dismissed habeas petitions filed prior to the expiration of the presumptively reasonable six-month period recognized in *Zadvydas*." *Man Lung Lo v. United States*, No. 1:15-cv-675, 2016 U.S. Dist. LEXIS 68077, at *2 (N.D. Ohio May 24, 2016); *see also Karki v. Jones*, No. 1:25-cv-281, 2025 WL 1638070 at * 8-9 (S.D. Ohio June 9, 2025) (Petitioners failed to establish that their detention was unlawful where their detention period fell "below the 6-month cutoff of presumptive reasonableness."); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1332–33 (11th Cir. 2021).

III. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: /s/ Brendan F. Barker
Brendan F. Barker
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400

Cleveland, OH 44113
(216) 622-3795
(216) 522-2404 (facsimile)
Brendan.barker@usdoj.gov

CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that this Response to Petition for Writ of Habeas Corpus comports with the page limitations identified in Local Rule 7.1(f). This case is unassigned, and the Response is under twenty pages in length.

/s/ Brendan F. Barker
Brendan F. Barker