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

10 SHAMIL MASAKOV,
11 Petitioner,
12 v.
13 CHRISTOPHER J. LAROSE, Warden,
Otay Mesa Detention Center; *et al.*,
14 Respondents.

Case No.: 26-cv-02824-BAS-DEB

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS AND MOTION
FOR INJUNCTIVE RELIEF**

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1 I. INTRODUCTION

2 Petitioner Shamil Masakov has filed a habeas petition and motion for a temporary
3 restraining order. ECF Nos. 1, 2. As the petition and motion assert the same claims and
4 relief, Respondents respond to both herein for the sake of judicial efficiency. For the
5 reasons set forth below, the Court should deny Petitioner’s requests for relief and
6 dismiss the petition as unripe under *Zadvydas v. Davis*. 533 U.S. 678, 689 (2001).

7 II. FACTUAL BACKGROUND

8 On September 5, 2021, Petitioner, a native and citizen of Russia, applied for
9 admission to the United States at the San Ysidro, California Port of Entry via the vehicle
10 primary lanes. *See* Exhibit (Ex.) 1 at 2. Petitioner was apprehended after initially failing
11 to yield at the inspection booth and admitting to not having valid documents to enter
12 the United States. *Id.* That same day, the government filed a Notice to Appear (NTA 1¹)
13 charging Petitioner with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an
14 arriving alien without valid entry documents and Petitioner was released on parole. *See*
15 Ex. 2; ECF No. 1 ¶¶ 3-4. Petitioner subsequently applied for asylum, withholding of
16 removal, and protection under the Convention Against Torture. ECF No. 1 ¶ 5.

17 On February 2, 2026, an Immigration Judge (IJ) denied Petitioner’s claims and
18 ordered him removed to Russia. *See* Ex. 4 at 1. The IJ issued the order *in-absentia* as
19 Petitioner failed to appear for the hearing and had previously admitted the factual
20 allegations in NTA 2 at a prior hearing. *Id.* Because Petitioner failed to appear at his
21 February 2, 2026 hearing, and subsequently failed to report to Immigration and Customs
22 Enforcement (ICE) or depart the United States based on the final order of removal, ICE
23 re-detained Petitioner on February 19, 2026. *See* Ex. 1 at 3-4; Ex. 4 at 2; Ex. 5; *see also*
24 8 U.S.C. § 1231.

25 On April 28, 2026, Petitioner filed a motion to reopen his immigration
26 proceedings. ECF No. 1 ¶¶ 10-11. The government cannot remove Petitioner while his
27 motion to reopen is pending. *Id.*

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¹ A superseding Notice to Appear (NTA 2) was filed on December 21, 2021. Ex. 3.

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III. ARGUMENT

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

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

The Supreme Court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing and that the noncitizen has the initial burden of proving that removal is not

1 significantly likely.” *Id.*

2 Here, the Court should dismiss Petitioner’s habeas case as his claims are not ripe
3 under *Zadvydas v. Davis*. 533 U.S. 678, 689 (2001). Petitioner has been subject to a
4 final order of removal for 99 days and he has been in immigration custody for the last
5 82 days. However, “*Zadvydas* places the burden on the alien to show, *after a detention*
6 *period of six months*, that there is ‘good reason to believe that there is no significant
7 likelihood of removal in the reasonably foreseeable future.’” *Pelich v. INS*, 329 F. 3d
8 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added); *see*
9 *also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). Plainly, Petitioner’s sole basis for
10 challenging the legality of his current detention is that he believes ICE violated his right
11 to Due Process under the Fifth Amendment when the agency re-detained him.²
12 However, he fails to provide any explanation for why his detention for less than 6
13 months during the removal period violates his right to due process. 8 U.S.C. §
14 1231(a)(2)(A) (“During the removal period, the Attorney General *shall* detain the
15 alien.”) (emphasis added).

16 Though the removal period here has only been 99 days, even if the removal period
17 had extended beyond six months, Petitioner cannot show that there is good reason to
18 believe that there is no significant likelihood of removal in the reasonably foreseeable
19 future (SLRRFF). The only evidence that there is no SLRRFF in Petitioner’s case, exists
20 because ICE is currently enjoined from effectuating his removal while his motion to
21 reopen and petition for writ of habeas corpus are pending.³

22 Finally, to the extent Petitioner is challenging ICE’s decision to detain him for
23 the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
24 (“Except as provided in this section and *notwithstanding any other provision of law*
25

26 ² Petitioner’s only proper habeas claims allege that his re-detention violates “substantive
27 due process,” ECF No. 1 at ¶¶ 54-58, and “procedural due process.” *Id.* at ¶¶ 59-62.

28 ³ Petitioner’s removal is currently stayed pending the adjudication of both his motion to
reopen in immigration court, as well as his petition for writ of habeas corpus in this
case. ECF No 1 at ¶¶ 10-11; ECF No. 3.

1 (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas
2 corpus provision, and sections 1361 and 1651 of such title, no court shall have
3 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
4 decision or action by the Attorney General to commence proceedings, adjudicate cases,
5 or execute removal orders against any alien under this chapter.”) (emphasis added); see
6 also *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There
7 was good reason for Congress to focus special attention upon, and make special
8 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
9 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
10 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
11 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
12 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
13 arrest and detain an alien at the commencement of removal proceedings are not within
14 any court’s jurisdiction”).

15 **IV. CONCLUSION**

16 For the foregoing reasons, Respondents respectfully request that the Court deny
17 Petitioner’s motion for injunctive relief and dismiss the petition as unripe under
18 *Zadvydas*.

19 DATED: May 12, 2026

Respectfully submitted,

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United States Attorney

21 s/ Hunter V. Norton
22 HUNTER V. NORTON
23 Assistant U.S. Attorney
24 Attorney for Respondents
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