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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 PETER LINO,

12 Petitioner,

13
14 v.

15 MARKWAYNE MULLIN, et al.,

16 Respondents.
17

Case No. 26-cv-3044-JO-JAC

**RETURN IN OPPOSITION TO
PETITIONER'S HABEAS
PETITION**

18
19 **I. INTRODUCTION**

20 Petitioner Peter Lino has filed a habeas petition. ECF No. 1. For the reasons set
21 forth below, the Court should deny Petitioner's requests for relief and dismiss the
22 petition.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 Petitioner is a citizen and national of South Sudan. Declaration of Deportation
25 Officer Santiago Prieto (Prieto Decl.) at ¶ 4. Petitioner also falsely claimed to be a
26 citizen of France. *Id.* Petitioner illegally entered the United States on or about August
27 1, 2025, without inspection. *Id.* at ¶ 4. He was placed in expedited removal proceedings
28 pursuant to 8 U.S.C. § 1225(b)(1) and taken into Immigration and Customs

1 Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(1)(B). *Id.* An expedited
2 removal order issued on August 2, 2025. Exhibit 1 (ERO). On September 29, 2025,
3 Petitioner claimed to have a credible fear of returning to South Sudan. Prieto Decl. at ¶
4 6. On September 24, 2025, Petitioner received a negative credible fear determination.
5 *Id.* The expedited removal order therefore became final that day. ICE has worked to
6 remove Petitioner to France and South Sudan. *See Id.* at ¶¶ 7-8. On October 25, 2025,
7 France confirmed that Petitioner is not a citizen of France. *Id.* at ¶ 7. On March 30,
8 2026, South Sudan issued a travel document for Petitioner. *Id.* at ¶ 8. ICE ERO has
9 manifested Petitioner for a flight to depart for South Sudan on or before June 3, 2026.
10 *Id.* at ¶ 9. Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1231(a).

11 III. ARGUMENT

12 A. Petitioner's detention is lawful, and he has not established that there is no 13 significant likelihood of removal in the reasonably foreseeable future.

14 ICE's authority to detain noncitizens who are subject to a final order of removal
15 is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully
16 present in the United States and a final order of removal has been entered, the
17 government ordinarily secures the alien's removal during a subsequent 90-day statutory
18 "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General
19 "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

20 The Supreme Court held in *Zadvydas* that when removal is not accomplished
21 during the 90-day removal period, the statute "limits an alien's post-removal-period
22 detention to a period reasonably necessary to bring about the alien's removal from the
23 United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689.
24 The Supreme Court has held that six months constitutes a "presumptively reasonable
25 period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief
26 where the presumptively reasonable six-month period has not yet elapsed. *See*
27 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
28 2025) ("The government is entitled to its six-month presumptive period before

1 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
2 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
3 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
4 been detained for more than six months. Petitioner has been in detention since May 29,
5 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
6 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
7 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
8 the release based on changed circumstances, “the revocation would merely restart the
9 90-day removal period, not necessarily the presumptively reasonable six-month
10 detention period under *Zadvydas*”).

11 Even after the period of presumptive reasonableness has run, release is not
12 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
13 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
14 Supreme Court instructed, “the habeas court must ask whether the detention in question
15 exceeds a period reasonably necessary to secure removal. It should measure
16 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
17 *alien’s presence at the moment of removal*.” *Id.* at 699 (emphasis added). In so holding,
18 the Supreme Court recognized that detention is presumptively reasonable pending
19 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
20 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
21 executable warrant of removal becomes a significant flight risk, especially if he or she
22 is aware that it is imminent.

23 The Supreme Court also instructed that detention could exceed six months: “This
24 6-month presumption, of course, does not mean that every alien not removed must be
25 released after six months. To the contrary, an alien may be held in confinement until it
26 has been determined that there is no significant likelihood of removal in the reasonably
27 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
28 reason to believe that there is no significant likelihood of removal in the reasonably

1 foreseeable future, the Government must respond with evidence sufficient to rebut that
2 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
3 alien to show, after a detention period of six months, that there is ‘good reason to believe
4 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
5 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
6 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

7 Petitioner has been detained over six months since his removal order became
8 final on September 24, 2025. His claim still fails because there is a significant likelihood
9 of removal in the reasonably foreseeable future. ICE has received a travel document
10 from South Sudan and scheduled a flight for his removal on or before June 3, 2026.
11 Prieto Decl. at ¶ 9.

12 To the extent Petitioner is challenging ICE’s decision to detain him for the
13 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
14 (“Except as provided in this section and *notwithstanding any other provision of law*
15 *(statutory or nonstatutory), including section 2241 of Title 28, or any other habeas*
16 *corpus provision, and sections 1361 and 1651 of such title, no court shall have*
17 *jurisdiction to hear any cause or claim by or on behalf of any alien arising from the*
18 *decision or action by the Attorney General to commence proceedings, adjudicate cases,*
19 *or execute removal orders against any alien under this chapter.*”) (emphasis added); *see*
20 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There
21 was good reason for Congress to focus special attention upon, and make special
22 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
23 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
24 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
25 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
26 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
27 arrest and detain an alien at the commencement of removal proceedings are not within
28 any court’s jurisdiction”).

