IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

EDGAR EDUARDO REYES GONZALEZ, Petitioner, v. KEVIN RAYCRAFT, Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, Department of Homeland Security, *et al.*, Respondents.	Case No. 1:26-cv-00510 District Judge Susan J. Dlott Magistrate Judge Stephanie K. Bowman

RETURN OF WRIT

Petitioner, Edgar Eduardo Reyes Gonzalez, is lawfully detained pursuant to 8 U.S.C § 1231(a) and this Court cannot enjoin action taken to remove Petitioner from the United States. He is subject to an administratively final reinstated expedited removal order. As such, this Court should deny and dismiss the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. (Petition, ECF 1.) Therefore, this Court should deny and dismiss the petition pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

I. RELEVANT FACTUAL BACKGROUND

Petitioner, Edgar Eduardo Reyes Gonzalez ("Petitioner" or "Reyes Gonzalez"), brings this action as a petition for habeas corpus under 28 U.S.C. § 2241. (Petition, ECF 1, PageID 1.) He is a 29-year-old native and citizen of Mexico and claims to have lived continuously in the United for the last 10 years. (*Id.* at PageID 5, ¶¶21-22.)

On December 19, 2015, Petitioner applied for admission to the United States at the Deconcini Port of Entry in Nogales, Arizona. (Declaration of William Belanich, Ex. A, at 2, ¶4; 2015 I-213, Record of Deportable/Inadmissible Alien, Exhibit B, at 1-2.) He presented a genuine passport to an immigration officer that was not his own, which he purchased for $1,500 in Nogales, Mexico. (*Id.* at 2.) Petitioner was processed for expedited removal for being inadmissible pursuant to INA sections 212(a)(6)(C)(i) and (7)(A)(i)(I). Petitioner provided a sworn statement confirming the above facts, which he signed. (2015 I-867A-B Record of Sworn Statement, Ex. C, at 1-7.) He was served with a Notice and Order of Expedited Removal and I-296 Notice to Alien Ordered Removed/Departure Verification. (*Id.* at 3; I-860 Notice and Order of Expedited Removal, Ex. D; I-296 Notice to Alien Ordered Removed/Departure Verification, Ex. E.) On December 20, 2015, Petitioner was removed to Mexico. (2015 I-213, Ex. B, at 3; I-296 Notice to Alien Ordered Removed/Departure Verification, Ex. E.

According to Petitioner, he returned to the United States a short time after his removal to Mexico on December 20 2015. (Petition, ECF 1, PageID 5, ¶22.)

On December 26, 2025, the following forms were filed on or behalf of Petitioner: I-130, Petition for Alien Relative; I-485, Application to Register Permanent Residence or Adjust Status; I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal; and I-601, Application for Waiver of Grounds of Inadmissibility. (Jones Decl., Ex. A., at 2, ¶7; 2026 I-213, Ex. F, at 3.)

On May 15, 2026, Petitioner was taken into ICE custody and served with a Warrant of Arrest of Alien and a Notice of Intent/Decision to Reinstate Prior [Removal] Order. (*Id.* at ¶8; 2026 I-213, Ex. F, at 2; I-871, Notice of Intent/Decision to Reinstate Prior Order, Ex. G.) Petitioner refused to sign a sworn statement. (2026 Record of Sworn Statement, Ex. H, at 2.)

A Form I-205 Warrant of Removal/Deportation was prepared for Petitioner on May 15, 2026 to remove him from the United States. (I-205 Warrant of Removal/Deportation, Ex. I.)

On May 18, 2026, Petitioner submitted a Petition for Review and an Emergency Motion for Stay of his removal with the Sixth Circuit Court of Appeals. The following day, an administrative stay was entered by the Sixth Circuit to consider Petitioner's Emergency Motion for Stay. (Belanich Decl., Ex. A, at 2-3, ¶¶9-10.)

Petitioner was to be scheduled for removal from the United States prior to the entry of the administrative stay. (*Id.*) There are no institutional barriers preventing ICE from removing Petitioner to Mexico, except for the administrative stay. *Id.* at 3, ¶11.

On May 22, 2026, Petitioner filed the Petition for a Writ of Habeas Corpus pursuant to 8 U.S.C. 2241. (Petition, ECF 1.)

On June 2, 2026, Petitioner filed Petitioner's Notice of Supplemental Facts. (Notice of Supp. Facts, ECF 9.)

Petitioner claims that, after filing this Petition, he "learned he was a victim of a severe form of [human] trafficking and [has] filed for humanitarian relief" in the form of a T-visa application. (*Id.* at PageID 39.) He claims that on May 20, 2026, a district court in the Central District of California issued a nationwide preliminary injunction, certifying three classes of immigrant survivors in *Immigr. Ctr. for Women & Child. v. Noem ("ICWC")*, No. 2:25-cv-09848, 2026 WL 1455004 (C.D. Cal. May 20, 2026). (*Id.*)

Petitioner does not claim he is a member of one of the three nationwide classes of immigrant survivors in *ICWC*. (*Id.* at PageID 39-40.) Instead, Petitioner claims that DHS is prohibited from "detaining or removing vulnerable noncitizens who have pending U, T, or VAWA [visa] petitions, granting them temporary protection while the litigation proceeds." (*Id.* at PageID

40.) Petitioner further claims that the Sixth Circuit's administrative stay of removal and the nationwide injunction prevent his continued detention now that he has a pending T visa application. (*Id.*)

II. LEGAL AND STATUTORY BACKGROUND

A. Removal Under 8 U.S.C. § 1231.

"The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). "If the immigration judge decides that the alien is inadmissible or deportable and that the alien is not entitled to any of the relief or protection that he requested, the immigration judge will issue an order of removal." *Id.* at 528 (citing 8 U.S.C. § 1229a(c)(5)).

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

The statute referring to a 90-day removal period, 8 U.S.C. § 1231(a)(1)(A), holds: "Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." *Martinez v. Larose*, 968 F.3d 555, 559 (6th Cir. 2020).

"The removal period is defined as beginning on the latest of three events: (1) "[t]he date the order of removal becomes administratively final"; (2) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order";

or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* at 559–60 (citing 8 U.S.C. § 1231(a)(1)(B)).

Regarding detaining an alien beyond the 90-day period, 8 U.S.C. § 1231(a)(6) states:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General 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).

"§ 1231(a)(3) allows for supervised release after the 90-day removal period expires '[i]f the alien does not leave or is not removed' during that time period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021).

Once the 90-day removal period has elapsed, the alien becomes subject to 8 U.S.C. § 1231(a)(6) which makes detention discretionary. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 639 (D. Mass. 2018). "Continued detention under this provision creates the 'post-removal-period.'" *Id.* "[I]n enacting § 1231, Congress and the President anticipated that not all aliens ordered removed would be deported during the removal period. *See* § 1231(a)(3) (referring to 'an alien' who 'does not leave ... within the removal period')." *Jimenez v. Cronen*, 317 F. Supp. 3d at 651. Thus, 8 U.S.C. § 1231 expressly anticipates revocation of supervision and detention beyond the 90-day removal period.

1. Reinstated Removal Orders.

§ 1231 detention provisions also apply to reinstated removal orders. *Guzman Chavez*, 594 U.S. at 538. Section 1231 (a)(5) provides, "If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject

to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry."

B. T Visas.

"[T]he T visa, . . . , provides legal status for survivors of severe human trafficking. Trafficking Victims Protection Act of 2000 ("TVPA") §§ 103(8), 107(e). To be eligible for a T visa, a petitioner must (1) be a survivor of a "severe form of trafficking in persons"; (2) be "physically present in the United States" or its territories; (3) have "complied with any reasonable request for assistance" by law enforcement, with some exceptions for age and the impact of trauma; and (4) be someone who would "suffer extreme hardship" if removed." *ICWC*, 2026 WL 1455004, at *3 (citing 8 U.S.C. § 1101(a)(15)(T)).

A T visa can provide waiver of "inadmissibility to allow a successful petitioner to remain in the country despite being otherwise removable." (*Id.* at *4 (citing TVPA § 107(e)(3); 8 U.S.C. § 1182(d)(13) (waiver of inadmissibility for T visa petitioners)).

"T visa petitioners whom USCIS determines set forth a prima facie case for approval are eligible for an [automatic] administrative stay of removal from DHS while the application is pending, during which time the applicant 'shall not be removed.'" *Id.* at 5 (citing 8 U.S.C. § 1227(d)(1)-(3)). However, a filed "T visa petition 'has no effect on DHS authority or discretion to execute a final order of removal.'" *Id.* (citing 8 C.F.R. § 214.204(b)(2)(i); 8 C.F.R. §§ 214.204(b)(2)(iii), 214.205(g)).

8 C.F.R. § 212.204(b)(2)(ii) requires that, "If the applicant is in detention pending execution of the final order, the period of detention (under the standards of 8 CFR 241.4) reasonably necessary to bring about the applicant's removal will be extended during the period the stay is in effect.

III. ARGUMENT

Petitioner seeks immediate release from detention. (Petition, ECF 1, PageID 15.) Despite having a valid reinstated, administratively final expedited order of removal, he argues his detention violates Due Process, the APA, and the INA, because an administrative stay was granted by the Sixth Circuit in order for that Court to consider his Emergency Motion for Stay of Removal. (*Id.* at PageID 2, 6, ¶¶2-6, 31-32.) Petitioner claims that because the Sixth Circuit's stay "stopped the 90-day removal period from running pursuant to 8 U.S.C. § 1231(a)(1)(B)(ii), detention is no longer mandatory under § 1231. (*Id.* at PageID 7, ¶¶46-47.) He claims that his detention is unlawfully in violation of the Fifth Amendment's Due Process Clause of the United States Constitution, the INA, and the APA. (*Id.* at PageID 7-14, ¶¶38-75.)

Petitioner's detention is lawful. Petitioner is not in detention during the 90-day removal period, as he claims. In fact, Petitioner is lawfully detained pending execution of an administratively final, reinstated expedited removal order pursuant to 8 U.S.C. § 1231(a)(5). Moreover, his detention for less than one month fails to state a claim under *Zadvydas v. Davis*. He is really asking this Court to delay and to stop his removal, which this Court has no jurisdiction to do. Thus, the Court should deny and dismiss his Petition.

Further, as Petitioner has just filed the T visa petition, Respondents are in the process of reviewing Petitioner's detention and removal pursuant to ICE Directive 11005.3. Therefore, any application of the preliminary injunction in *ICWC* to Petitioner is not necessary.

The Court should deny the Petition because this Court lacks subject-matter jurisdiction over his claims because 8 U.S.C. § 1252, *et seq.*, precludes the review. Even if the Court had jurisdiction, Petitioner still fails to plead plausible claims for relief.

IV. THIS COURT LACKS JURISDICTION

A. This Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252

In reality, Petitioner challenges his detention for the execution of his final order of removal. The Court lacks jurisdiction to hear a challenge to Petitioner's removal under 8 U.S.C. § 1252. As such, this Court should deny the Petition and dismiss this action for lack of subject matter jurisdiction. In enacting the REAL ID Act, Congress limited the jurisdiction of federal courts through 8 U.S.C. § 1252(g) as follows:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), *including section 2241 of title 28,* or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added). "In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order." *Rranxburgaj v. Wolf,* 825 F. App'x 278, 283 (6th Cir. 2020). This holds true "whether or not [federal courts] agree with ICE's decision to execute [a petitioner's] removal order." *Id.*

These types of claims are barred under 8 U.S.C. §1252(g). This statute bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a

decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 482 (1999).

The Sixth Circuit, and including other Courts of Appeals, have consistently held that similar petitioners' challenges to removal are barred by § 1252(g). *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *see also Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS's legal authority as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen., U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Title 8 U.S.C. § 1252(g) therefore limits jurisdiction as it relates to claims arising from such execution of removal orders—even if federal question jurisdiction would otherwise be proper. *See Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010). By its terms, this statutory

limitation also applies to habeas relief under 28 U.S.C. § 2241, which would typically provide jurisdiction over cases where an alien is held in custody in violation of the Constitution or the laws of the United States. *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001).

To the extent Petitioner is making a collateral attack on his underlying reinstated removal order, this Court lacks jurisdiction. *Moreno-Martinez v. Barr*, 932 F.3d 461 (6th Cir. 2019). Indeed, the Sixth Circuit has further explained that, "any challenge (collateral or otherwise) filed 30 days after the removal order is untimely and we have no jurisdictional basis to entertain the challenge. *Sanchez-Gonzalez v. Garland*, 4 F.4th 411, 414 (6th Cir. 2021) (citing Moreno-Martinez, 932 F.3d at 465).

Petitioner was lawfully arrested and detained in order to execute his administratively final reinstated order of removal. (Belanich Decl., Ex. A, at 2, ¶8.) To the extent Petitioner challenges the lawfulness of ICE's decision to detain him *for* the enforcement of his removal order, the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition. *Grigorian v. Bondi*, Case No. 25-cv-22914, 2025 WL 1895479, *4 (S.D. Fla July 8, 2025) (distinguishing between challenge to ICE decision or action to detain in furtherance of execution of removal order versus challenge to "underlying legal bases" of those decisions or actions).

This Court lacks jurisdiction because Petitioner is challenging ICE's "decision to execute his removal, the decision to detain him, the methods by which he was detained, [and] the Government's authority to deport or detain him. *See Grigorian v. Bondi*, No. 25-CV-22914, 2025 WL 1895479, at *4 (S.D. Fla. July 8, 2025).

Petitioner is contesting ICE's decisions and **actions taken** in **execution** of his valid, final reinstated order of removal. (emphasis added). Indeed, Petitioner's claims relate directly to his final reinstated expedited order of removal. By making these arguments, Petitioner is necessarily

challenging the action taken to execute his removal order, which this Court has no jurisdiction to review. As a result, the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition.

B. Sections 1252(a)(5) and (b)(9) Bar Review of Petitioner's Claims.

This Court also lacks jurisdiction over Petitioner's claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . 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 . . . ."

In relation to section 1252(a)(9), the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, at *5 (S.D. Ohio Jan. 3, 2017). In fact, the First Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

Petitioner has sought an emergency stay of removal as a part of the administrative process. *See generally* 8 C.F.R. § 1003.2(f), 1003.23(b)(v). However, because Petitioner's requested relief

arises from an "action taken . . . brought to remove" Petitioner "from the United States" and is a petition for habeas corpus, this court lacks jurisdiction. § 1252(b)(9).

Thus, to obtain habeas relief, Petitioner must not merely show that he is "in custody," but rather that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n.3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'" quoting 28 U.S.C. § 2254(a)). Petitioner cannot meet this burden because he is lawfully detained. Therefore, this Court lacks jurisdiction to consider Petitioner's challenge to his detention and pending removal. *See, e.g, Touray v. Lynch,* No. 1:25-cv-683, 2025 WL 2778271, at *3 (S.D. Ohio Sept. 30, 2025). Thus, the Petition should be denied and dismissed.

V. PETITIONER'S DETENTION PENDING REMOVAL IS LAWFUL

A. Petitioner's Detention Complies With Due Process, the APA, and the INA.

Petitioner does not contest the fact that he has a valid reinstated expedited removal order. He also does not contest that he is inadmissible under 8 U.S.C. § 1182. There is no question that ICE has authority to detain Petitioner during the removal process. "Detention during removal proceedings is a constitutionally permissible part of [the removal] process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, immigration officials retain discretion not to execute a final order of removal within 90 days. *Arizona v. Biden*, 40 F.4th 375, 391 (6th Cir. 2022). "Immigration authorities, as the Supreme Court has made clear, have considerable discretion over whom to arrest and remove." *Id.* (citing *Arizona v. U.S.*, 567 U.S. 387, 396 (2012)).

The Supreme Court has long recognized that immigration-related decisions of executive branch officers, as in this case, afford due process in the absence of judicial review. "[A]s to

'foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). "Since then, the [Supreme] Court has often reiterated this important rule." *Id.* (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953), and *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative").

In *Zadvydas v. Davis*, the Supreme Court interpreted Section 1231(a)(6), the provision that allows for detention beyond the removal period, to limit post-removal-period detention to a period "reasonably necessary to bring about the alien's removal from the United States." 533 U.S. 678, 689 (2001). The Court held that post-removal-order detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, if removal is no longer reasonably foreseeable, continued detention is not authorized by the statute. *Id.* at 699.

The burden is on the petitioner to show his removal is unlikely, as an alien may be detained beyond six months unless the "alien provides good reason to conclude there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future in a habeas corpus petition, the government must respond with evidence sufficient to rebut that showing. *Id.*

In *Zadvydas*, the Court emphasized that the "basic purpose" of immigration detention is "assuring the alien's presence at removal" and concluded this purpose was not served by the continued detention of aliens whose removal was not "reasonably foreseeable." *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas* because no country would accept the deportees or the United States lacked an extradition treaty with their receiving countries.

The Supreme Court's rulings in this area, however, do not require the government to release every alien who has been in detention for more than six months. To the contrary, in *Zadvydas*, the Court held:

> 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 for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. **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 (emphasis added).

Similarly, in *Clark v. Martinez*, an alien's removal to Cuba was not reasonably foreseeable when the government conceded "that it is no longer even involved in repatriation negotiations with Cuba." 543 U.S. 371, 386 (2005). In both cases, the Court recognized that the government's purported interest in detaining an alien was severely diminished when there is no significant likelihood that the alien could be removed. *See Demore v. Kim*, 538 U.S. 510, 527 & n.10 (2003) (observing that detentions at issue in *Zadvydas* did not serve a feasible immigration purpose). The "indefinite and potentially permanent" civil detention of such an alien would clearly pose serious substantive due process concerns. *See Zadvydas*, 533 U.S. at 696. Because Congress did not clearly intend "to authorize long-term detention of unremovable aliens," however, the Court held that this

constitutional threat could be avoided by construing the statute as not authorizing detention once removal is no longer reasonably foreseeable. *Id.* at 697-99.

To state a claim under *Zadvydas*, the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 701.

Detaining Petitioner to enforce his administratively final, reinstated expedited removal order, does not violate the Fifth Amendment, the APA, or the INA. He is lawfully detained pending execution of his administratively final, reinstated expedited removal order pursuant to 8 U.S.C. § 1231(a)(5). Petitioner's reinstated expedited removal order became final upon its reinstatement on May 15, 2026. 8 U.S.C. 1231(a)(1); (I-871, Notice and Decision to Reinstate Prior Removal Order, Ex. H.); *see also Guzman Chavez*, 594 U.S. at 534 ("Reinstated removal orders are administratively final.") (cleaned up); *Sanchez-Gonzalez v. Garland*, 4 F.4th 411, 414 (6th Cir. 2021) (explaining that final orders of removal are reinstated from the original date, not the date of reinstatement). Further, "a reinstated final order of removal is a final administrative decision that is not subject to review." *Cargill v. Healy*, No. 4:24-cv-1280, 2024 WL 247993, *4 (N.D. Ohio Jan. 21, 2025) (citing *Martinez v. Larose*, 968 F.3d 555. 563 (6th Cir. 2020)).

Moreover, his 21-day detention fails to state a claim under *Zadvydas v. Davis*. Since he was taken into ICE custody on May 15, 2026, his detention is within the six-month presumptively reasonable detention period under *Zadvydas*, 533 U.S. at 701. This period will not end until mid-November 2026. (2026 I-213, Ex. G.) The Petitioner's 21-day detention does not violate due process because *Zadvydas* analysis only applies where there is a "danger of indefinite detention [with] no significant likelihood of removal in the reasonably foreseeable future." *Jiang Lu v. U.S. ICE*, 22 F. Supp. 3d 839, 843 (N.D. Ohio 2014).

In similar, recent circumstances, other district courts in our Circuit have recognized that detention less than six months following reinstatement of a prior order of removal is lawful pursuant to *Zadvydas*. *See, e.g.*, *Abad v. Raycraft*, No. 1:26-cv-1288, 2026 WL 1481115 (May 27, 2026) (slip copy); *Barnada-Horta v. Raycraft*, No. 1:26-cv-1023, 2026 WL 1265521 (May 8, 2026) (slip copy); *Celilio v. Raycraft*, No. 1:26-cv-814, 2026 WL 1004422 (April 14, 2026) (slip copy).

Further, Petitioner cannot demonstrate a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner's administrative stay by the Sixth Circuit—to consider his Emergency Motion for Stay of Removal—is not a sufficiently good reason. See [Cite]

B. Petitioner's Filing of a T Visa Petition Does Not Foreclose § 1231 Detention Authority Or Halt Execution of a Reinstated Expedited Removal Order.

Petitioner claims that ICE cannot continue his detention because he (1) filed a T visa application; (2) the Sixth Circuit filed an administrative stay (to consider his motion for a stay of removal); and (3) the nationwide injunction issued in the ICWC decision in the Central District of California. (Notice of Supplemental Facts, ECF 9, PageID 40, ¶4.) However, this is simply not the case.

As explained above, Petitioner's detention is lawful pursuant to 8 U.S.C. § 1231(a). The Sixth Circuit's stay of removal is temporary for it to consider whether to grant Petitioner a stay of removal. Petitioner only filed his T visa on May 29, 2025 (received by the agency), after he filed the Petition on May 22, 2026, after the ICWC preliminary injunction was entered, and after he was taken into custody on May 15, 2026.

The Federal Respondents state that because Petitioner's T visa application was just received last week, whether or not it will be approved is not known. That said, Respondents are as

in the process of considering whether Petitioner's T visa application has made out a prima facie case for approval. Once a bona fide determination is made, Petitioner may be "eligible for an [automatic] administrative stay of removal from DHS while the application is pending, during which time the applicant 'shall not be removed.'" *ICWC*, 2026 WL 1455004, at 5 (citing 8 U.S.C. § 1227(d)(1)-(3)).

However, the pending T visa petition does not affect the Respondents ability to detain or remove Petitioner. *Id.* at *4 (citing 8 C.F.R. § 214.204(b)(2)(i); 8 C.F.R. §§ 214.204(b)(2)(iii), 214.205(g)). And, if a stay is granted, the Petitioner's detention period will be extended while it is in effect. *See* 8 C.F.R. § 212.204(b)(2)(ii) Even so, Respondents are in the process of reviewing Petitioner's detention and removal under ICE Directive 11005.3. Therefore, the Petition should be denied because Petition cannot make out a claim under *Zadvydas*, and application of the preliminary injunction in the *ICWC* case to Petitioner is not necessary because, although a time frame cannot be made at the moment, a bona fide decision is forthcoming.

CONCLUSION

This Court lacks subject matter jurisdiction, Petitioner's detention is lawful, and the Petition should be denied and dismissed.

Respectfully submitted,

DOMINICK S. GERACE II
United States Attorney

s/William B. King II
WILLIAM B. KING II (094046)
Assistant United States Attorney
Attorney for the Federal Respondents
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
Office: (513) 684-3711
Fax: (513) 684-6972
E-mail: Bill.King@usdoj.gov