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8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 KENNEDY NDOLO TIMINA,  
12 Petitioner,  
13 v.  
14 WOFFORD, *ET AL.*,  
15 Respondents.

CASE NO. 1:25-CV-804-SAB

**RETURN TO PETITION FOR WRIT OF  
HABEAS CORPUS**

17 **I. INTRODUCTION**

18 Petitioner Kennedy Ndolo Timina, who is subject to a final order of removal and detained  
19 pursuant to discretionary detention authority under 8 U.S.C. §1231(a)(6), seeks release from the United  
20 States Department of Homeland Security (“DHS”) Immigration and Customs Enforcement (“ICE”) custody pending efforts to effectuate his removal. Petitioner argues he is entitled to release because his  
21 detention has exceeded the 90-day statutory removal period under §1231(a). However, the Supreme  
22 Court has held that §1231 “read in light of the Constitution’s demands” provides for a presumptively  
23 reasonable six-month time period for release that may be prolonged absent a showing by the petitioner  
24 that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v.*  
25 *Davis*, 533 U.S. 678, 690 and 701 (2001). As demonstrated in the accompanying Declaration of  
26 Deportation Officer Lorenzo Perez dated September 5, 2025 (“Perez Declaration”), ICE has been  
27 actively pursuing Petitioner’s removal to a third country. Petitioner has failed to demonstrate that there  
28

1 is no significant likelihood of removal in the reasonably foreseeable future, and his request for  
2 immediate release should be denied.

## 3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Petitioner, a native and citizen of Kenya, entered the United States on or about July 27, 2015, as  
5 a nonimmigrant student pursuant to an F-1 student visa. Perez Declaration, ¶ 5. Petitioner's F-1 visa  
6 expired on November 18, 2016. *Id.*

7 On December 19, 2023, Petitioner was convicted in the United States District Court for the  
8 Central District of California of conspiracy to distribute and possess with intent to distribute oxycodone  
9 in violation of 21 U.S.C. § 846. Perez Declaration, ¶ 6; Ex. 2. He ultimately received a sentence of 15  
10 months incarceration. *Id.*

11 On November 5, 2024, Petitioner was arrested and detained pursuant to 8 U.S.C. § 1226(c), as an  
12 alien who is deportable for having been convicted of an aggravated felony pursuant to 8 U.S.C.  
13 § 1227(a)(2)(A)(iii). Perez Declaration, ¶ 7. That same day, DHS issued the petitioner a Final  
14 Administrative Removal Order to Kenya based on his conviction for an aggravated felony drug  
15 trafficking offense. Perez Declaration, ¶ 8; Ex. 3. Because the petitioner was an alien with a final  
16 administrative removal order who is deportable for having been convicted of an aggravated felony, he  
17 was subject to mandatory detention pursuant to 8 U.S.C. § 1231(a)(2). Perez Declaration, ¶ 9. He was  
18 detained and transferred to Golden State Annex in McFarland, California, pending removal. *Id.*

19 On November 25, 2024, Petitioner was placed in withholding-only proceedings. Perez  
20 Declaration, ¶ 10. On March 31, 2025, an Immigration Judge in Adelanto, California, granted Petitioner  
21 deferral of removal to Kenya. Perez Declaration, ¶ 11; Ex. 5. On January 30, 2025, ICE conducted a  
22 Post-Order Custody Review and determined the continued custody of the Petitioner was warranted.  
23 Perez Declaration, ¶ 12; Ex. 6.

24 As of February 3, 2025, Petitioner has been detained pursuant to 8 U.S.C. § 1231(a)(6) as an  
25 alien ordered removed who is removable under 8 U.S.C. § 1227(a)(2)(A)(iii) and who has been detained  
26 beyond the 90-day removal period. Perez Declaration, ¶ 12.

27 On May 2, 2025, ICE initiated a 180-day Post-Order Custody Review and determined the  
28 continued custody of the Petitioner was warranted. Perez Declaration, ¶ 13.

1 On August 29, 2025, Petitioner was transferred to California City ICE Processing Center in  
2 California City, California, pending removal. Perez Declaration, ¶ 14.

3 ICE is actively pursuing petitioner's removal to a third country. Perez Declaration, ¶ 15.

### 4 III. LEGAL FRAMEWORK

5 Congress enacted a multi-layered statute that provides for the continued civil detention of aliens  
6 pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). The detention and  
7 removal of aliens, like Petitioner, who are subject to a final order of removal issued after removal  
8 proceedings, is governed by 8 U.S.C. § 1231. Under this statute, there is a 90-day "removal period,"  
9 during which detention is mandatory. 8 U.S.C. § 1231(a)(1), (2); *Zadvydas v. Davis*, 533 U.S. 678, 683  
10 (2001). Once the mandatory removal period ends, ICE has discretion to continue detaining aliens  
11 pending their removal. 8 U.S.C. § 1231(a)(6).

12 In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) did not authorize the  
13 government to detain a removable alien indefinitely beyond the 90-day statutory removal period; rather,  
14 the Court construed the statute to contain an implicit "reasonable time" limitation. 533 U.S. at 682. The  
15 Court concluded that six months was a presumptively reasonable period of detention which should be  
16 read into the statute. *Id.* at 701. After six months, an alien is entitled to habeas relief only if he can show  
17 "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The Ninth  
18 Circuit has explained that *Zadvydas* requires an alien to show he is "stuck in a 'removable-but-  
19 unremovable limbo,' as the petitioners in *Zadvydas* were." *Prieto-Romero v. Clark*, 534 F.3d at 1063  
20 (internal citation omitted). That is, the alien must show he "is unremovable because the destination  
21 country will not accept him or his removal is barred by our own laws." *Id.* (citing *Zadvydas*, 533 U.S. at  
22 697).

23 While an alien's detention is no longer presumed to be reasonable after six months, "there is  
24 nothing in *Zadvydas* which suggests that the Court must or even should assume that any detention  
25 exceeding that length of time is unreasonable." *Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D.  
26 Wash. 2002), *aff'd sub nom. Lema v. I.N.S.*, 341 F.3d 853 (9th Cir. 2003).

### 27 IV. ARGUMENT

28 Petitioner's detention is lawful. While the Petitioner's post-removal-period detention has

1 exceeded the presumptively reasonable six-month period, he has failed to sustain his burden of showing  
2 there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at  
3 701. He has not shown he is stuck in “removable-but-unremovable limbo.” *Prieto-Romero v. Clark*,  
4 534 F.3d at 1063. Petitioner has not alleged that no third country will ever accept him. Nor has he cited  
5 to any United States law that bars his removal. Thus, he is not in a “removable-but-unremovable  
6 limbo.” ICE is actively pursuing Petitioner’s removal to a third country. Perez Declaration, ¶ 15.  
7 Although his removal is not currently scheduled, the removal process takes time, and removal to a third  
8 country involves processes to assure the Petitioner is not being sent to a receiving country where he may  
9 also fear torture. The fact his detention “does not have a certain end date does not change the analysis.”  
10 *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (citing *Prieto-Romero*, 534 F.3d at 1063).

11 Accordingly, Petitioner has failed to establish that there is no significant likelihood of removal in  
12 the reasonably foreseeable future.

### 13 V. CONCLUSION

14 Based on the foregoing, the Court should find that Petitioner’s detention continues to be lawful  
15 under 8 U.S.C. § 1231(a)(6), and deny the Petition for Writ of Habeas Corpus.

16  
17 Dated: September 5, 2025

ERIC GRANT  
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19 By:   
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