

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03195-PAB

MOUAD EL AHRACH,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,
ROBERT GUADIAN, Acting Field Office Director, Denver Field Office, Immigration and
Customs Enforcement,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, and
PAMELA BONDI, Attorney General, U.S. Department of Justice,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's October 17, 2025, Order, ECF No. 13, Respondents hereby respond to Petitioner Mouad El Ahrach's Application for a Writ of Habeas Corpus, ECF No. 1 (filed October 10, 2025) (the "Application"). Pursuant to 28 U.S.C. § 2241, Petitioner, through counsel, asserts that Petitioner's continued detention by Immigration and Customs Enforcement ("ICE") violates 8 U.S.C. § 1231, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and Petitioner's procedural and substantive due process rights under the Fifth Amendment of the United States Constitution. ECF No. 1 ¶¶ 114-133. Further, Petitioner alleges that Petitioner's procedural due process rights under the Fifth Amendment have been violated because ICE has failed to conduct custody

reviews under 8 C.F.R. § 241.4. *Id.* ¶ 125.

The Application should be denied. The burden is on Petitioner to show that Petitioner's detention while awaiting removal violates 8 U.S.C. § 1231 or due process under the standards prescribed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner has not met that burden, as ICE has been pursuing steps to effectuate Petitioner's removal.

Also, Petitioner has not shown that Petitioner's detention otherwise violates due process. Petitioner's detention should be evaluated solely under the unitary standard established in *Zadvydas*. Moreover, despite Petitioner's assertions in the Application, ICE has conducted a custody review related to Petitioner's detention and has scheduled Petitioner for a personal interview on November 5, 2025, concerning Petitioner's continued detention.

FACTUAL BACKGROUND

Petitioner's encounter with Customs and Border Protection. Petitioner is a native and citizen of Morocco. Ex. A, Decl. of Eliasib Luna (October 31, 2025) ¶ 4. On July 3, 2024, the United States Customs and Border Protection encountered Petitioner after Petitioner unlawfully entered the United States on or about July 2, 2025. *Id.* ¶ 5. Petitioner was placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1), which allows for removal of noncitizens inadmissible under 8 U.S.C. § 1182 "without further hearing or review" unless the noncitizen indicates the intention to apply for asylum or a fear of persecution. *Id.*; see also 8 U.S.C. § 1225(b)(1).

Petitioner's claimed fear of persecution. Petitioner claimed a fear of persecution if returned to Morocco on July 19, 2024. *Id.* ¶ 6. Petitioner was referred to the United States Citizenship and Immigration Services ("USCIS") for a credible fear interview under 8 U.S.C. § 1225(b)(1)(A)(ii). *Id.* ¶ 6. USCIS made several attempts to procure a Moroccan-Arabic interpreter for Petitioner's interview, but all attempts were unsuccessful, so an interview was not conducted. *Id.* ¶ 7.

Removal proceedings. On August 21, 2024, USCIS exercised its discretion to issue a Notice to Appear ("NTA") and transfer Petitioner from expedited removal proceedings to removal proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review ("EOIR"). *Id.* ¶ 8. Petitioner was charged with being inadmissible to the United States on two grounds. First, Petitioner was charged under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as a noncitizen seeking admission to the United States who is not in possession of valid entry documents as required under § 1181(a). *Id.* Second, Petitioner was charged under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States "without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General." *Id.*

On August 29, 2024, Petitioner moved for a custody redetermination before the Immigration Judge ("IJ"). *Id.* ¶ 9. On November 14, 2024, Petitioner appeared before the IJ, with the assistance of an interpreter. *Id.* ¶ 11. Petitioner was granted an extension to prepare Petitioner's removal case, but the IJ denied Petitioner's request for a custody redetermination because the IJ lacked jurisdiction to redetermine custody under

8 U.S.C. §§ 1225(b)(1) and 1225(b)(2). *Id.* Petitioner did not appeal the IJ's decision concerning custody redetermination. *Id.*

On December 12, 2024, Petitioner filed an application for relief from removal. *Id.* ¶ 12. Petitioner appeared before the IJ for a hearing on the application for relief on April 7, 2025. *Id.* ¶ 13.

Order of removal. At the April 7, 2025, hearing, the IJ ordered Petitioner removed from the United States to Morocco but granted withholding of removal to Morocco. *Id.* Both parties waived appeal, making the removal order administratively final on April 7, 2025. *Id.* ¶ 13.

Continued detention under § 1231(a) and efforts to remove Petitioner. After the IJ entered the final order of removal, ICE assumed custody of Petitioner and Petitioner was detained under 8 U.S.C. § 1231(a), which authorizes the detention of noncitizens ordered removed from the United States. Two days after Petitioner's removal order became administratively final, on April 9, 2025, ICE solicited acceptance of Petitioner for removal from the United States to the following potential third countries: Mexico, Guatemala, and Panama, under 8 U.S.C. § 1231(b), a provision that permits removal to third countries under certain conditions. *Id.* ¶ 14. To date, ICE has not yet received responses from these potential third countries. *Id.*

On May 11, 2025, Petitioner moved to reopen Petitioner's immigration proceedings before the IJ. *Id.* ¶ 15. The IJ denied Petitioner's motion on June 6, 2025. *Id.* ¶ 16.

Petitioner's Post Order Custody Review. On July 9, 2025, ICE initiated Petitioner's 90-day Post Order Custody Review ("POCR") under 8 C.F.R. § 241.4, a provision under which ICE has a process to evaluate a noncitizen's custody after a final order of removal. *Id.* ¶ 17. Due to an administrative oversight, the POCR was not completed until October 10, 2025. *Id.* ¶¶ 17, 23. Based on the POCR, ICE determined that Petitioner is a significant flight risk and continued to detain Petitioner pending Petitioner's removal from the United States. *Id.* ¶ 24.

Petitioner is scheduled for a personal interview concerning Petitioner's custody on November 5, 2025. *Id.* ¶ 17. Petitioner is currently detained at the ICE contract detention facility ("Denver CDF") in Aurora, Colorado. *Id.* ¶ 22.

ICE anticipates that it will pursue additional options for Petitioner's removal to a third country under 8 U.S.C. § 1231(b). *Id.* ¶ 25. At this time, additional third countries for Petitioner's removal have not yet been identified. *Id.* If the Court so orders, ICE can provide the Court with a Status Report in thirty days providing an update on its third country removal efforts in Petitioner's case. *Id.* ¶ 26.

Petitioner's habeas application. Petitioner, through counsel, filed this action in the District of Colorado on October 10, 2025. *See generally* ECF No. 1. In the Application, Petitioner asserts three claims for relief. First, Petitioner alleges a statutory violation under 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*. *See id.* ¶ 116. Petitioner alleges that Petitioner's detention after the final order of removal has exceeded the presumptively-reasonable six month period

prescribed under 8 U.S.C. § 1231(a)(6) and that Petitioner's removal from the United States is not likely to occur in the reasonably foreseeable future because Respondents have not made any efforts to remove Petitioner to a third country. *Id.* ¶¶ 117-20.

Second, Petitioner claims that Respondents have violated Petitioner's procedural due process rights under the Fifth Amendment of the United States Consitution in three ways: (a) Respondent's failure to make any efforts for Petitioner's removal to a third country has rendered Petitioner's detention "indefinite," *Id.* ¶ 124; (b) Respondents have failed to provide Petitioner notice concerning Petitioner's removal to a third country," *Id.*; (c) Respondents have failed to conduct custody reviews under 8 C.F.R. § 241.4 during Petitioner's post final order of removal detention. *Id.* ¶ 125.

Third, Petitioner alleges that Respondents have violated Petitioner's substantive due process rights under the Fifth Amendment of the United States Constitution because of the "indefinite nature" of Petitioner's continued detention since more than six months have lapsed since Petitioner's order of removal became administratively final and there is no "indication of any plan for removal." *Id.* ¶¶ 126-32.

On October 17, 2025, the Court ordered Respondents to show cause on or before October 31, 2025, and Petitioner to reply on or before November 7, 2025. See ECF No. 13.

ARGUMENT

The Application should be denied. Petitioner fails to establish that Petitioner's detention violates 8 U.S.C. § 1231, *Zadvydas*, or the Due Process Clause of the Fifth

Amendment.

I. Petitioner's continued detention is authorized under 8 U.S.C. § 1231(a)(6).

Petitioner's detention is authorized by 8 U.S.C. § 1231(a), which provides for the "detention, release, and removal of [noncitizens] *ordered removed*." 8 U.S.C. § 1231(a) (emphasis added). Under § 1231(a), DHS "shall detain" a noncitizen "[d]uring the removal period." *Id.* § 1231(a)(2). When the removal period begins, the government is instructed to "remove the [noncitizen] from the United States within a period of 90 days." See 8 U.S.C. § 1231(a)(1)(A). The removal period is the 90-day period that begins on the latest of the following:

- (i) The date the order of removal becomes administratively final [;]
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order[; or]
- (iii) If the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.

See 8 U.S.C. § 1231(a)(1)(B).

Here, Petitioner's order of removal became administratively final on April 7, 2025, when it was entered by the IJ and both parties waived appeal. See Ex. A ¶ 13; see also 8 U.S.C. § 1231(a)(1)(B). Thus, Petitioner's ninety-day mandatory removal period concluded on July 6, 2025 (90 days after April 7, 2025).

In certain circumstances, the ninety-day removal period may be extended. See 8 U.S.C. § 1231(a)(1)(C) ("The removal period shall be extended beyond a period of 90 days and the [noncitizen] may remain in detention during such extended period if the

noncitizen fails or refuses to make timely application in good faith for travel or other documents necessary to the [noncitizen]'s departure."). Upon expiration of the ninety-day mandatory removal period, the government may detain a noncitizen, such as Petitioner, in limited circumstances. See 8 U.S.C. § 1231(a)(6).

Under 8 U.S.C. § 1231(a)(6), "[a noncitizen] ordered removed who is inadmissible under section 1182 of this title. . . may be detained beyond the removal period . . ." Here, ICE determined that Petitioner is inadmissible pursuant to 8 U.S.C. §§ 1182(a)(6) and 1182(a)(7) because Petitioner entered the United States without being admitted or paroled, and Petitioner did not possess valid documentation as required by 8 U.S.C. § 1181(a). See Ex. A ¶ 8; see also ECF No. 1-1 at 2 (April 7, 2025, IJ Order). Following the expiration of the removal period, continued detention of noncitizens who are inadmissible—like Petitioner—is entrusted to DHS's discretion. See 8 U.S.C. § 1231(a)(6). Therefore, despite Petitioner's assertion, there is no statutory violation; rather, Petitioner's continued detention is permissible under 8 U.S.C. § 1231(a)(6).

II. Petitioner fails to establish that Petitioner's detention violates due process as set forth in *Zadvydas*.

The Supreme Court held in *Zadvydas* that 8 U.S.C. § 1231(a)(6) permits detention only so long as the detention does not violate due process. Petitioner claims in the Application that Petitioner's continued detention violates *Zadvydas* because Petitioner has been detained beyond the presumptively reasonable six-month period after the final order of detention. See ECF No. 1 ¶¶ 86-94, 114-21.

In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is “presumptively reasonable.” *Id.* at 700-01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. The Court stated that after six months, “once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing.” *Id.* at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (“the onus is on the [noncitizen] to ‘provide[] good reason to believe that there is no [such] likelihood’ before ‘the Government must respond with evidence sufficient to rebut that showing’)” (quoting *Zadvydas*, 533 U.S. at 701).

Petitioner has been detained for approximately seven months (207 days) since Petitioner’s removal order became final on April 7, 2025. *See* Ex. 1 ¶ 13. However, Petitioner has not met Petitioner’s initial burden to “provide[] good reason to believe that there is *no significant likelihood of removal in the reasonably foreseeable future*[.]” *See Zadvydas*, 533 U.S. at 701 (emphasis added). And even if Petitioner had, the declaration of ICE Deportation Officer Eliasib Luna attached hereto demonstrates that ICE is continuing its efforts to effectuate Petitioner’s removal, which is likely in the reasonably foreseeable future.

Petitioner argues that since Petitioner’s removal order became administratively final, “the government has failed to identify a single country for removal . . . and has not

even begun its search for a third country that would accept [Petitioner]." See ECF No. 1 ¶ 117. This is not correct. As explained above, ICE initiated the process to identify a third country for Petitioner's removal, and did so merely days after the removal order became administratively final. See Ex. A ¶ 14. On April 9, 2025, ICE solicited acceptances for Petitioner's removal from the United States to the governments of Mexico, Guatemala, and Panama. *Id.* To date, ICE has not yet received responses from these potential third countries. *Id.*

Further, ICE anticipates that it will continue its search for a third country that will accept Petitioner. *Id.* ¶ 25. When Petitioner is accepted by a third country, ICE will initiate removing Petitioner from the United States to the third country after providing Petitioner notice. If the Court so orders, ICE can provide the Court with a Status Report in thirty days providing an update on its efforts to remove Petitioner to a third country. *Id.* ¶ 26.

Because Petitioner fails to establish that there is *no significant likelihood of removal in the reasonably foreseeable future*, Petitioner has not established that Petitioner is entitled to relief under *Zadvydas*.

III. Petitioner fails to establish a violation of Petitioner's procedural due process rights under the Fifth Amendment.

In addition to the argument that Petitioner's detention violates the standard set by the Supreme Court in *Zadvydas*, Petitioner argues that Petitioner's continued detention violates Petitioner's procedural due process rights in three other, related ways. First, Petitioner argues that the detention has been rendered "indefinite" because Respondents

have not started the process to effectuate Petitioner's removal to a third country. ECF No. 1 ¶ 124. Second, Respondents have failed to provide Petitioner notice of their intent to remove Petitioner to a third country. *Id.* Third, Respondents have failed to conduct custody reviews under 8 C.F.R. § 241.4. ECF No. 1 ¶ 125.

As an initial matter, Petitioner's arguments fail to recognize that the Supreme Court, in *Zadvydas*, set a unitary due process standard to govern when the government may detain a noncitizen more than six months under a final order of removal. That due process standard is the standard described above—whether there is significant likelihood of removal in the reasonably foreseeable future—and the Court indicated that if this standard is met, the detention is not unconstitutionally prolonged for purposes of due process. See *Zadvydas*, 533 U.S. at 701 (explaining that “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”) (emphasis added). The Court thus should evaluate the constitutionality of Petitioner's prolonged detention *solely* under the *Zadvydas* standard; all of Petitioner's due process challenges should be evaluated under that unitary standard, as explained above, and not some other standard.

But even if the Court separately considers Petitioner's other due process challenges, it should reject them for the reasons set forth below.

A. Respondents have initiated the process for Petitioner's removal to a third country.

As discussed above, Respondents have not violated Petitioner's procedural due process rights because Petitioner's detention is not “indefinite.” Respondents initiated

the process of identifying a third country for Petitioner's removal from the United States in the time that Petitioner has been detained after the order of removal became final. Respondents solicited acceptances merely two days after Petitioner's removal order became administratively final. Ex. A ¶ 14. Upon receiving confirmation that a third country will accept Petitioner, ICE will initiate Petitioner's removal to the third country. Once removed to the third country, Petitioner will no longer be in ICE custody and Petitioner's detention will have ceased.

B. Petitioner's claim regarding notice of Petitioner's removal to a third country is not ripe.

Respondents have also not violated Petitioner's procedural due process rights by failing to provide notice that Petitioner will be removed to a third country. Based on the Application, Petitioner is aware that Respondents anticipate removing Petitioner to a third country because Petitioner has been granted withholding of removal to Petitioner's native country, Morocco. See ECF No. 1 ¶¶ 117-18. At this time, ICE has not confirmed acceptance of Petitioner to any third country. ICE is still in the process of soliciting acceptance of Petitioner to potential third countries. Ex. A ¶ 25. Because ICE has yet to receive acceptance of Petitioner, Petitioner has not been notified of Petitioner's removal to a third country. Thus, any claim challenging Petitioner's potential removal to a third country is not yet ripe, since Respondents have not yet identified such third country. See *Doe v. Becerra*, No. 23-cv-00072-BLF, 2023 WL 218967, at *4 (N.D. Cal. Jan. 17, 2023) ("[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (internal quotation

omitted) (quoting *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009)).

Moreover, any future objection Petitioner may have to removal to a particular third country would not be a habeas challenge to detention, and is the subject of a non-opt-out class action.¹

C. Petitioner received a 90-day POCR and has been scheduled for a personal interview.

Despite Petitioner's assertions in the Application, ICE initiated Petitioner's 90-day POCR under 8 C.F.R. § 241.4 on July 9, 2025, and completed the POCR on October 10, 2025. Ex. A ¶¶ 17, 23. ICE determined that Petitioner is a significant flight risk and continued to detain Petitioner pending Petitioner's removal from the United States. *Id.* ¶ 24. Due to an administrative oversight, although the the 90-day POCR was initiated on July 9, 2025, it was not completed until October 10, 2025. *Id.* ¶ 24. Petitioner was served with the 90-day POCR on October 15, 2025. *Id.* ICE has scheduled Petitioner for a personal interview concerning Petitioner's continued detention on November 5, 2025. Ex. A ¶ 17.

Therefore, Petitioner fails to establish a violation of Petitioner's procedural due process rights under the Fifth Amendment.

CONCLUSION

For the foregoing reasons, the Application should be denied.

¹ Petitioner's assertions concerning notice and processes associated with third-country removal may implicate issues that are currently being addressed through a certified, non-opt-out class action pending in the District of Massachusetts. See *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 2025 WL 1142968 (D. Mass. 2025).

Dated: October 31, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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