

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

Civil Action No. 25-cv-03660-PAB

ISSAM MOHAMAD TAMAYZA FADWA,

Petitioner,

v.

TODD M. LYONS, in his official capacity as Acting Director, U.S. Immigration and
Customs Enforcement;
ROBERT HAGAN, Field Director of the Denver Field Office Director;
JUAN BALTAZAR, Warden, Denver Contract Detention Facility,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's November 17, 2025, Order, ECF No. 9, Respondents hereby respond to Petitioner Issam Mohamad Tamyza Fadwa's Application for a Writ of Habeas Corpus, ECF No. 1 (filed November 13, 2025) (the "Application"). Pursuant to 28 U.S.C. § 2241, Petitioner, through counsel, alleges that his continued detention violates 8 U.S.C. § 1231 and the United States Constitution. *Id.* ¶ 6. He further asserts that there is no significant likelihood of his removal in the reasonably foreseeable future because Petitioner is "stateless" and Respondents have not yet been able to effectuate his removal to a third country. See ECF No. 1 ¶¶ 5-6.

As discussed below, Claims 1 and 5 should be denied because Petitioner fails to establish statutory violations under 8 U.S.C. § 1231. Claim 4 should be denied because

it is not ripe since Respondents have not yet received acceptance of Petitioner to any third country for removal.

As it relates to Claim 2, the Court should analyze any alleged substantive due process violation under the unitary due process standard recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) that governs when the government may detain a noncitizen for more than six months under a final order of removal, not some other standard.

As it relates to Claim 3,—Petitioner’s claim that his continued detention violates due process under *Zadvydas*—ICE has determined that it is viable to remove Petitioner to the Palestinian Territories, for which Petitioner holds valid travel documents, by arranging his travel on a commercial flight to Israel and then escorting him through Israel to the West Bank or Gaza. See Ex. A, Decl. of Rosa Escareno (November 24, 2025) ¶¶ 27. ICE has submitted a request for travel documents to the Israeli government to effectuate Petitioner’s removal as described above, and it generally takes 90-180 days for the Israeli government to reach a decision on such requests. See *id.* ¶¶ 26. Since 180 days have elapsed since ICE submitted the request to the Israeli government, Respondents propose to submit a status report within thirty days concerning the status of their ongoing efforts to remove Petitioner to the Palestinian Territories.

FACTUAL BACKGROUND

Petitioner's encounter with Customs and Border Protection. Petitioner possesses a passport issued by the Palestinian Authority. *Id.* ¶ 6. He alleges that he is a native and citizen of Palestine, and that the United States "considers him stateless." See ECF No. 1 ¶ 31. Prior to entering the United States, Petitioner lived in the West Bank Palestinian Territory. See *id.* ¶ 34; see also Ex. A ¶ 12.

On October 15, 2024, the United States Customs and Border Protection ("CBP") encountered Petitioner near Otay Mesa, California, after he had illegally entered the United States from Mexico. Ex. A ¶ 4. On October 16, 2024, 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.* ¶ 8; see also 8 U.S.C. § 1225(b)(1). Petitioner did not claim fear of persecution when encountered and interviewed by CBP. Ex. A ¶ 7. The Notice and Order of Expedited Removal charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (alien who, at the time of application for admission, is not in possession of a valid unexpired visa, reentry permit, border crossing card, or other valid entry document). *Id.* Petitioner was detained at the Otay Mesa Detention Center pending expedited removal. *Id.* ¶ 9.

Petitioner's claimed fear of persecution and expedited removal proceedings. On October 23, 2024, Petitioner claimed a fear of persecution if returned

to the Palestinian Authority and expressed an intent to seek asylum in the United States. *Id.* ¶ 10. 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. On the same date, Petitioner was transferred to ICE custody at the ICE contract detention facility in Aurora, Colorado (“Denver CDF”). *Id.* ¶ 11.

USCIS interviewed Petitioner regarding his claimed fear of persecution between November 19, 2024, and November 21, 2024. *Id.* ¶ 12. At the conclusion of the interview, USCIS determined that Petitioner was subject to the limitation on asylum eligibility under 8 C.F.R. § 208.35(a). *Id.* Under 8 C.F.R. § 208.35(a), noncitizens who entered the United States across the southern border, such as Petitioner, during emergency border circumstances are ineligible for asylum, unless an exception in § 208.35(a)(2) applies. Petitioner has not alleged that he qualifies for one of the exceptions in § 208.35(a)(2). USCIS also determined that Petitioner failed to establish a reasonable probability of persecution or torture. *Id.* Upon Petitioner’s request, USCIS referred its finding to the Immigration Judge (“IJ”) for review pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(III). *Id.*

On February 7, 2025, Petitioner, represented by counsel, appeared before the IJ for a credible fear interview. *Id.* ¶ 17. The IJ affirmed the negative credible fear determination and returned the case to the Department of Homeland Security (“DHS”) for removal of Petitioner. *Id.*

Order of removal. Because Petitioner was subject to expedited removal

proceedings, Petitioner's order of removal became administratively final on February 7, 2025, when the IJ affirmed the negative credible fear determination. *Id.* ¶ 18.

Continued detention under § 1231(a) and efforts to remove Petitioner. After the IJ affirmed the negative credible fear determination, ICE prepared to remove Petitioner from the United States to the Palestinian Territories via a Special High-Risk Charter ("SHRC") flight because, at that time, no commercial airlines were flying to the Palestinian Territories. *Id.* ¶ 20. ICE determined that it was possible to remove Petitioner to the Palestinian Territories by transporting Petitioner to a neighboring country and then escorting him to the Palestinian Territories. *Id.*

On March 15, 2025, ICE pursued third country removal as an alternative option by submitting Requests for Acceptance of Alien to Turkey, Israel, and Lebanon pursuant to 8 U.S.C. § 1231(b). *Id.* ¶ 21. To date, ICE has not received responses from any of the three countries. *Id.*

On April 24, 2025, Petitioner was transferred from the Denver CDF to the El Paso Service Processing Center in El Paso, Texas for staging for removal to the Palestinian Territories. *Id.* ¶ 22. Shortly thereafter, on May 6, 2025, Petitioner was transferred back to the Denver CDF as a SHRC to the Palestinian Territories had not been successfully coordinated. *Id.* ¶ 23.

On May 28, 2025, ICE submitted a travel document application to the Israeli government on Petitioner's behalf. *Id.* ¶ 24. If issued, the travel documents would allow Petitioner to travel to Israel so that he could be escorted to the Palestinian Territories.

Id. ¶ 25. To date, ICE has not yet received a response from the Israeli government. *Id.* ¶ 26. However, generally, the Israeli government reaches a decision on such requests in 90-180 days. *Id.* As of today, 180 days have elapsed since ICE submitted the application to the Israeli government. Upon issuance of Petitioner's travel documents from the Israeli government, Petitioner will be transported via commercial flight to the Ben Gurion Airport in Tel Aviv, Israel and then escorted through Israel to the West Bank or Gaza. *Id.* ¶ 27. ICE has successfully removed multiple Palestinians using this process in the past year, including several within the past couple of days. *Id.* ¶ 28.

Petitioner's habeas application. Petitioner, through counsel, filed this action in the District of Colorado on November 13, 2025. *See generally* ECF No. 1. In the Application, Petitioner asserts five claims for relief. First, Petitioner asserts a statutory violation of 8 U.S.C. § 1231(a)(6), alleging that his continued detention "is not mandatory and is unjustified." *See id.* ¶ 38-40. Second, Petitioner claims that his continued detention is a violation of substantive due process because it "serves no legitimate purpose, and it amounts to punishment in violation of the Fifth Amendment." *See id.* ¶ 41-49. Third, Petitioner alleges that his continued detention violates *Zadvydas* because there is no significant likelihood of removal in the reasonably foreseeable future. *See id.* ¶ 50-53. Fourth, Petitioner alleges a violation of procedural due process because he has not been provided notice and the opportunity to seek protection from removal to a third country. *See id.* ¶ 54-57. Fifth, Petitioner claims a statutory violation under 8 U.S.C. § 1231(b) based on Respondents alleged failure to identify or establish

a third country for Petitioner's removal as required under the statute. *Id.* ¶ 58-62.

ARGUMENT

I. **Claim 1 should be denied because 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 February 7, 2025, when the IJ affirmed DHS's negative credible fear determination. See Ex. A ¶ 18; see also 8 U.S.C. § 1231(a)(1)(B). Thus, the ninety-day removal period concluded on May 8, 2025 (90 days after February 7, 2025).

However, 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)(7)(A)(i)(I) because at the time of application for admission, Petitioner did not possess valid documentation as required by 8 U.S.C. § 1181(a). See Ex. A ¶¶ 8; see also ECF No. 1-2 at 2 (October 16, 2024, Notice of Order and Expedited Removal). 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, there is no statutory violation; rather, Petitioner’s continued detention is permissible under 8 U.S.C. § 1231(a)(6).

II. Claim 2 should be analyzed under the *Zadvydas* standard.

In Claim 2, Petitioner argues that his continued detention violates his substantive due process rights because it serves no “legitimate purpose and it amounts to punishment in violation of the Fifth Amendment.” See ECF No. 1 at ¶¶ 41-49. However, in *Zadvydas*, the Supreme Court addressed when continued detention pending removal violates the Fifth Amendment. 533 U.S. at 688-702 (analyzing whether continued detention pending removal violated the Fifth Amendment). Petitioner’s substantive due process claim does not appear to raise any additional or different arguments than his *Zadvydas* claim, and thus the Court should evaluate the constitutionality of Petitioner’s detention solely under the *Zadvydas* standard.

III. Respondents should submit a status report in 30 days concerning Claim 3.

Petitioner claims that his continued detention violates due process because he has been detained beyond the presumptively reasonable six-month period identified by the Supreme Court in *Zadvydas*. See ECF No. 1 ¶¶ 50-53. 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. Rather, the Court stated that after six months, if “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 nine months (290 days) since his removal order became final on February 7, 2025. *See* Ex. A ¶ 18. The declaration of ICE Deportation Officer Rosa Escareno attached hereto demonstrates that ICE has made efforts during the past nine months to effectuate Petitioner’s removal. *See generally id.* Specifically, one month after Petitioner’s removal order became final, ICE submitted Requests for Acceptance of Alien to Turkey, Israel, and Lebanon pursuant to 8 U.S.C. § 1231(b). *Id.* ¶ 21. To date, ICE has not received responses concerning the requests. *Id.*

In addition, on May 28, 2025, ICE submitted a travel document application to the Israeli government in obtain approval for Petitioner to travel to Israel so that he can then be escorted to the Palestinian Territories. *Id.* ¶ 25. To date, the travel document

application has not been adjudicated by the Israeli government. *Id.* ICE has followed up with the Israeli government regarding the status of Petitioner's travel document application four times since it was submitted, including as recently as this month. *Id.*

¶ 26. Generally, ICE has received decisions from the Israeli government regarding such travel document applications within 90 to 180 days. *Id.* As of the date of this filing, 180 days have elapsed since ICE submitted the application to the Israeli government.

Upon issuance of the travel documents from the Israeli government, ICE will coordinate Petitioner's removal from the United States by arranging a flight on a commercial airline to the Ben Gurion Airport in Tel Aviv, Israel, and escorting Petitioner through Israel to the West Bank or Gaza. *Id.* ¶ 27. In Fiscal Year 2025, ICE has successfully removed multiple Palestinians to the Palestinian Territories via Israel, including several within the past couple of days. *Id.* ¶ 28.

Because ICE anticipates a response from the Israeli government regarding Petitioner's travel document in the near future based on ICE's recent experience with such applications, Respondents propose to submit a status report within thirty days concerning their ongoing efforts to remove Petitioner to the Palestinian Territories.

IV. Petitioner fails to establish a violation of Petitioner's procedural due process rights with respect to removal to a third country.

Petitioner alleges that Respondents have failed to provide notice of his removal to a third country and deprived him of the opportunity to seek protection from such a removal. See ECF No. 1 ¶ 56. He seeks an order "barring his removal from the United States to any country unless he is afforded sufficient process under the Fifth

Amendment.” *Id.* ¶ 57.

Petitioner’s claim regarding notice of his removal to a third country is not ripe. At this time, ICE has not received responses to its Requests for Acceptance of Petitioner to any third country. Because a third country has yet to accept Petitioner, there is nothing for ICE to notify Petitioner of with respect to his removal to a third country. Thus, any claim challenging Petitioner’s potential removal to a third country is not yet ripe. See *Doe v. Becerra*, No. 23-cv-00072-BLF, 2023 WL 218967, at *4 (N.D. Cal. Jan. 17, 2023) (holding that “[t]o the extent that Petitioner is concerned about his ability to challenge his removal to a third country, should one be identified, such a claim is not yet ripe, because DHS has identified no such third country” (citations omitted)). Moreover, any future objection Petitioner may have to removal to a particular third country would not be a habeas challenge to detention, and would likely overlap with the claims in a non-opt-out class action case pending in another district.¹

V. Claim 5 should be denied because the 8 U.S.C. § 1231(b) procedures are not applicable.

In Claim 5, Petitioner makes the bare and conclusory allegation that Respondents have not designated and identified potential third countries of removal pursuant to the statutory requirements of 8 U.S.C. § 1231(b)(2). As a preliminary matter, Petitioner does not identify which specific procedures in § 1231(b)(2) have not been

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).

followed by Respondents.

Further, although ICE solicited acceptances of Petitioner to three third countries, see Ex. A ¶ 21, at this time, ICE does not plan to remove Petitioner to a third country. Rather, ICE plans to remove Petitioner to the Palestinian Territories by means of travel through Israel. *Id.* ¶¶ 27-28. Petitioner possesses a valid passport issued by the Palestinian Authority and, by his own account, he is a “native and citizen of Palestine.” See *id.* ¶ 6; see also ECF No. 1 ¶ 10. Thus, the third country removal procedures under 8 U.S.C. § 1231(b)(2) are not applicable.

CONCLUSION

For the foregoing reasons, Claims 1, 4, and 5 in the Application should be denied. As it relates to Claims 2 and 3, if the Court so orders, Respondents will provide the Court with a status report in thirty days on its efforts to remove Petitioner to the Palestinian Territories.

Dated: November 24, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 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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