UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ISSAM MOHAMAD TAMAYZA FADWA, (A[redacted]) *Petitioner,* v. TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; ROBERT HAGAN, Field Director of the Denver Field Office, in his official capacity; and JUAN BALTAZAR, Warden of Denver Contract Detention Facility, in his official capacity, *Respondents.*	**Case No. 25-cv-03660-PAB** **REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS**

On November 13, 2025, Petitioner Issam Mohamad Tamayza Fadwa ("Mr. Fadwa") filed a petition for a writ of habeas corpus on the basis that his immigration detention violates the Immigration and Nationality Act as well as his substantive and procedural due process rights.[1] *See* ECF No. 1. Pursuant to the Court's November 17, 2025, order to show cause, ECF No. 9, Respondents opposed to the petition on November 24, 2025. Opp., ECF No. 10. Respondents, however, have failed to establish that the Court should not grant the habeas petition. 28 U.S.C. § 2243. Accordingly, this Court should grant Mr. Fadwa's habeas petition on each of the counts pled in the petition.

[1] Mr. Fadwa requests the Court replace Johnny Choate with Juan Baltazar as the correct Warden of the Denver Contract Detention Facility.

Mr. Fadwa's Continued Detention Is Not Mandatory And Is Both Unconstitutional and Contrary to Statute.

Mr. Fadwa's order of removal became final on February 7, 2025, which was 295 days ago. Escareno Decl, ECF No. 10-1, ¶ 18. The 90-day statutory removal period during which time detention is mandatory ended in May of this year, over six months ago, and DHS's efforts to remove him to the Palestinean Territories and multiple third countries have, to date, failed. ECF No. 10 at 7, 9-10. Facing indefinite detention after more than one year in custody (nine months of which have been since receiving a final order of removal) and without a significant likelihood of removal in the reasonably foreseeable future, Mr. Fadwa's continued detention is not mandatory, constitutional, or lawful.

Respondents submit that Mr. Fadwa's petition should be denied simply because his continued detention is authorized under 8 U.S.C. § 1231(a)(6). Opp. at 7-8. Section 1231(a)(6) states that noncitizens ordered removed from the United States, like Mr. Fadwa, "may be detained beyond the removal period," thereby allowing for a level of discretion in detention beyond the removal period. *Id.* But Respondents must nevertheless justify the current detention and have made no claim here that Mr. Fadwa is a flight risk or danger to the community such that his continued detention is warranted. Moreover, where a detainee faces indefinite detention without a significant likelihood of removal in the reasonably foreseeable future, as is the case for Mr. Fadwa, the scales tip against the Department of Homeland Security's ("DHS") implicit statutory discretion in detaining individuals beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 689, 699-701 (2001) (holding that § 1231(a)(6), construed to avoid serious constitutional problems, "does not permit indefinite detention" and requires release once there is "no significant likelihood of removal in the reasonably foreseeable future"). Furthermore, Respondents are required to follow the statute in effectuating a removal order, which, as described below, has not happened here. Put differently,

simply because the government *may* detain Mr. Fadwa does not end the inquiry and automatically render his continued detention lawful. Considering the facts of this case, this Court should conclude that Mr. Fadwa's continued detention is neither constitutional nor lawful.

A. Mr. Fadwa's Continued Detention is Unconstitutional.

This Court should grant the petition because Mr. Fadwa's continued detention is unconstitutional. In *Zadvydas*, the Supreme Court held that a noncitizen may only be detained post-order under § 1231(a)(6) "for a period reasonably necessary to bring about that [individual's] removal from the United States." 533 U.S. at 689. And, critically, those detained for this purpose are nevertheless entitled to constitutional protections. *Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1252 (10th Cir. 2008). Thus, indefinite detention is unconstitutional. *Zadvydas*, 533 U.S. at 701. Addressing this issue, the Supreme Court in *Zadvydas* held that detention for up to six months after the issuance of a final order of removal is presumptively reasonable, but "[a]fter this 6-month period, once the [noncitizen] 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." *Id.*

There is good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, and Respondents have not responded with any evidence sufficient to rebut that showing. *See Pena-Gil v. Lyons*, No. 25-cv-03268-PAB, 2025 WL 3268333, at *4 (D. Colo. Nov. 24, 2025) (concluding that "[u]nsubstantiated assertions that the government will pursue removal are insufficient to satisfy its burden."). Respondents have spent nine months trying to remove Mr. Fadwa to no avail. Respondents admit that no country has acknowledged any of their requests for acceptance or travel documents and that a chartered flight is not viable. Escareno Decl. at ¶¶ 19-27; Opp. at 9. And despite having asked Israel four times in the last six months for

travel documents to allow Mr. Fadwa to fly to and travel through that country, Israel has not acknowledged or responded to the request. Escareno Decl. at ¶¶ 25-26; *see Kamyab v. Bondi*, 2025 WL 2917522, at *4 (W.D. Wash. Oct. 14, 2025) (concluding that vague statements that a country is processing interview requests and accepting return of its citizens to be insufficient to meet the Government's burden under *Zadvydas*). Indeed, according to Respondents, Israel generally responds in less time to a request for travel documents and has recently allowed transfer of other individuals through Israel to the Palestinian Territories[2] but has yet to even acknowledge Respondents' request regarding Mr. Fadwa. *See* Escareno Decl. at ¶¶ 25-26. Furthermore, travel to Israel is only one step in the described process of returning to the West Bank. Respondents have not provided any details about how transfer would occur from Israel to the West Bank and why that is a viable option at this point. Although Respondents have indicated that others have been removed to the Palestinian Territories through Israel, Respondents do not explain how or why other individuals could be removed via this avenue or why it would be reasonable to assume (without any facts) that Mr. Fadwa is similarly situated. *See Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288, * 16-17 (W.D. Wash. Aug. 21, 2025) (concluding that generalized comments that removal is likely are insufficient). Simply put, while Respondents have asked other countries to aid in the removal of Mr. Fadwa, Respondents have been unable to make any arrangements and there is no reason to believe that this status quo will change in the near future. *See Momennia v. Bondi*, 2025 WL 3006045, at *2 (W.D. Okla. Oct. 27, 2025) (rejecting the government's assertion that the agencies were working on a third-country removal, concluding that "Respondents, however, have not identified any countries with which any level of progress has been made toward obtaining the country's acceptance of Petitioner.").

[2] Respondents' declaration does not provide any specifics as to these removals, including whether they were to the West Bank.

Indeed, instead of submitting argument to establish that their efforts have been sufficient to establish a significant likelihood of removal in the reasonably foreseeable future, Respondents have opted to kick the can and ask for an additional thirty days within which to justify Mr. Fadwa's continued detention. Opp. 10. But Respondents have had nine months to effectuate the order of removal and have not even received an acknowledgement of their efforts by any other country. *Zadvydas* does not provide a scheme in which the government can submit periodic status reports; it requires release if there is no showing of a significant likelihood of removal in the reasonably foreseeable future. "At the risk of stating the obvious, a chance of removal within an unspecified period of time is not the same as a significant likelihood of removal in the reasonably foreseeable future." *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) (holding that the government's assertion that they were "in the process of working" with potential countries for removal and that "there was a chance that Petitioner would be removed to one of these countries, but that they could not provide a specific timeframe for his removal" failed to establish a significant likelihood of removal in the reasonably foreseeable future) (internal quotations omitted). With no response from the Israeli or any other foreign government on any of the applications or requests submitted since March, establishing a significant likelihood of removal in the reasonably foreseeable future is practically impossible. *Id.*; *see also Pena-Gil*, 2025 WL 3268333, at *4. Based on the record in this case, the Court should conclude that Respondents have not made the requisite showing and accordingly the Court should order Mr. Fadwa's release from custody. This Court must therefore reject Respondents' request to keep Mr. Fadwa detained for yet another month based on the mere hope that they might get a response that they have not yet received after several months of waiting.

Without a likelihood of removal, Mr. Fadwa's continued detention has become punitive. In *Rodriguez-Fernandez v. Wilkenson*, the Tenth Circuit recognized that a Cuban whom the government had been unsuccessful in seeking to deport to Cuba was entitled to release after he had been detained for "more than a few months . . . because such detention has become imprisonment." 654 F.2d 1382, 1387 (10th Cir. 1981). And the Tenth Circuit has also recognized that long-term detention is not punitive and authorized "only where limited special circumstances are present and particular procedural requirements are satisfied." *Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1245 (10th Cir. 2008). That is, § 1231(a)(6) authorizes "continued detention [only] for a 'small segment of . . . individuals' whose release would particularly endanger the public's health or safety, 8 C.F.R. § 241.13(b), (d), (f), or the nation's foreign relations. 8 C.F.R. § 231.14(c)." *Id.* Respondents make no attempt to argue that Mr. Fadwa's continued detention falls under either category, simply relying only on the discretionary ability to keep Mr. Fadwa detained. *See* Opp. Because Respondents admit that Mr. Fadwa's continued detention is permissive but they have failed to justify Mr. Fadwa's ongoing detention, his detention amounts to punishment in violation of the Fifth Amendment and is therefore impermissible. *See* ECF No. 1 at 11-12; *see also Zadvydas*, 533 U.S. at 690.

B. Respondents Efforts to Remove Mr. Fadwa Violate His Procedural Due Process Rights.

Regarding Mr. Fadwa's claim that Respondents have failed to provide notice of his removal to a third country and have thereby deprived him of the opportunity to seek protection from such removal, Respondents next assert that "because a third country has yet to accept [Mr. Fadwa], there is nothing for ICE to notify [Mr. Fadwa] of with respect to his removal to a third country." ECF No. 10 at 11. As such, Respondents claim, this claim is "not yet ripe." *Id.*

As a threshold matter, Respondents cannot have it both ways—they cannot argue that continued detention is justified because they have taken steps to begin Mr. Fadwa's removal process to third countries while also contending that his challenge to that process is unripe simply because none of those countries have accepted ICE's applications to date. In other words, Respondents assert that Mr. Fadwa cannot challenge any lack of due process until he is accepted by a third country, at which point he may have mere hours before being removed from the United States.

In addition to those logical inconsistences, the case cited by Respondents on this point, *Doe v. Becerra*, is distinguishable. No. 23-cv-00072-BLF, 2023 WL 218967 (N.D. Cal. Jan. 17, 2023). In *Doe*, the petitioner was challenging removal to an unknown and unnamed third country when he had "no ties to, no lawful immigration status in, nor any known pathway to obtaining lawful immigration status in any [third] country." *Id.* at *1. Here, Respondents openly acknowledge that they have submitted Requests for Acceptance to specific, identified third countries. ECF No. 10 at 5, 9. Thus, *Doe* is factually distinct.

Moreover, Respondents incorrectly claim that Mr. Fadwa's claims are likely subsumed by the *D.V.D.* class action. *Id.* at 11; *see D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025). Critically, Mr. Fadwa does not fall within the *D.V.D.* class because he was ordered removed under 8 U.S.C. § 1225(b)(1). Escareno Decl. at ¶¶ 8, 18; *see D.V.D.*, 778 F. Supp. 3d at 378 (certifying a class of "[a]ll individuals who have a final removal order issued in proceedings under [8 U.S.C. §§ 1229a, 1231(a)(5), or 1228]. . ."). Ultimately, Mr. Fadwa cannot be removed to a third country until Respondents properly identify a potential third country and thereafter comply with required due process, including both notice of a country of removal and the opportunity to raise a fear of

going to that country. He therefore requests this Court issue an order barring his removal from the United States to any country unless he is afforded sufficient process under the Fifth Amendment.

C. Mr. Fadwa's Continued Detention Is Unlawful.

Finally, Mr. Fadwa's continued detention violates the Immigration and Nationality Act. Critically, Respondents admit that they have not complied with the statute in their efforts to remove Mr. Fadwa. 8 U.S.C. § 1231(b) outlines the process by which DHS identifies a country of removal. *See* 8 U.S.C. § 1231(b)(2)(A); *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 340-41 (2005). The Supreme Court has described the statute as including "four consecutive removal commands," looking first to the chosen and designated country of removal. *Jama*, 543 U.S. at 341 (citing 8 U.S.C. § 1231(b)(2)(A), (C)). If that country is not possible, the government shall designate removal to the country of which the noncitizen is a citizen. *Id.* (citing 8 U.S.C. § 1231(b)(2)(D)). If there is no available country at that step, the government shall remove the noncitizen to a country "with which he has a lesser connection" as described in 8 U.S.C. § 1231(b)(2)(E)(i)-(vi). *Id.* And, finally, only if those countries are "impracticable, inadvisable, or impossible," the government may designate "another country whose government will accept the alien into that country." *Id.* (citing 8 U.S.C. § 1231(b)(2)(E)(vii).

As a threshold matter, Respondents' pleadings are inconsistent as to where they intend to remove Mr. Fadwa. Respondents state that they only intend to remove Mr. Fadwa to the Palestinian Territories. Opp. at 11-12. But Respondents have, contrary to that assertion, also sought permission to remove Mr. Fadwa to Turkey, Israel, and Lebanon, although those countries have not yet responded to Respondents' inquiries. Escareno Decl., ECF No. 10-1 at ¶ 21. And, notwithstanding their inquiries to Turkey, Israel, and Lebanon, Respondents have described a continued desire to remove Mr. Fadwa to the Palestinian Territories by requesting documents from the Israeli

government to allow Mr. Fadwa to travel there at which point ICE would, it claims, escort him to the Palestinian Territories. *Id.* at ¶ 25. Thus, Respondents' pleadings are, at best, confusing as to whether they intend to remove him to a third country.

However, irrespective of Respondents' contradictory intent, Respondents have violated 8 U.S.C. § 1231(b)(2) in identifying a country for removal. *Jama*, 543 U.S. at 341. Indeed, Respondents admitted that they *simultaneously* sought to remove Mr. Fadwa to the Palestinian Territories *and* three other countries. Escareno Decl. at ¶ 21. That does not comply with the process outlined in § 1231(b)(2). Moreover, there is no evidence as to whether the Palestinian Territories will receive Mr. Fadwa, thus Respondents' requests made to the additional countries were premature. *See Jama*, 543 U.S. at 341. Under the statute, Respondents can only identify an alternative country of removal once it is clear that the designated country is not an option. 8 U.S.C. § 1231(b)(2)(C)-(E); *Jama*, 543 U.S. at 341, 344-45. And the identified country must follow a specific, statutory analysis as to connections to particular countries. *Jama*, 543 U.S. at 341. There is no indication that has happened here. Accordingly, Respondents' requests to Turkey, Israel, and Lebanon were unlawful and there is no indication that they would be proper countries of removal under § 1231(b)(2). To the extent that Mr. Fadwa's detention has been prolonged based on Respondents' attempts to approach multiple countries of removal in violation of § 1231(b)(2), the Court should find such process and corresponding detention unlawful.

CONCLUSION

For the foregoing reasons, the Court should grant relief and order that Mr. Fadwa be released from custody and an order that he should not be re-detained absent compliance with both the statute and principles of procedural due process.

Dated: November 29, 2025

Respectfully submitted,

/s/ Jessica A. Dawgert
JESSICA A. DAWGERT
Blessinger Legal, PLLC
7389 Route 29, Suite 320
Falls Church, VA 22042
(703) 738-4248
jdawgert@blessingerlegal.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on 11/29/2025, I filed the foregoing reply with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all parties.

/s/ Jessica A. Dawgert
JESSICA A. DAWGERT
Blessinger Legal, PLLC
7389 Route 29, Suite 320
Falls Church, VA 22042
(703) 738-4248
jdawgert@blessingerlegal.com