IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04164-RMR

ALDEGUNDO RODRIGUEZ HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, United States Secretary, Department of Homeland Security,
TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement (ICE),
MARCOS CHARLES, Acting Executive Associate Director, ICE Enforcement and Removal Operations,
ROBERT HAGAN, ICE Denver Field Office Director[1],
JUAN BALTASAR, Warden, GEO-ICE immigration detention facility in Aurora, Colorado, and
PAMELA JO BONDI, United States Attorney General,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No.4)

In accordance with the Court's Order dated December 29, 2025, ECF No. 4, Respondents respond to the Petition for Writ of Habeas Corpus filed by Aldegundo Rodriguez Hernandez ("Petitioner"), ECF No. 1 (filed December 24, 2025).

As explained further below, Petitioner, a citizen of Mexico, was issued a final order of removal in 2019 but was not removed at that time and was not taken into

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[1] Robert Hagan, who is now the ICE Field Office Director for Denver, is hereby automatically substituted for Kelei Walker as a party in this case pursuant to Federal Rule of Civil Procedure 25(d), which provides that "when a public officer who is a party in an official capacity … ceases to hold office," the "officer's successor is automatically substituted as a party."

custody. Then, just a few weeks ago, on December 19, 2025, he was taken into custody by ICE and detained based on his order of removal. He appears to challenge his detention on two main grounds—that his detention is not authorized by statute because he was not detained until six years after his removal order was entered, ECF No. 1 at 5 ¶ 24, and that his detention violates due process because his removal is "not reasonably foreseeable because the Defendants are precluded from deporting him to Mexico" and have not yet taken steps "to attempt to deport him to a third country." *Id.* at 4 ¶ 20. But as explained below, his detention is authorized by statute, and it has not become so prolonged and indefinite as to violate due process.

Petitioner also raises concerns in his Petition that he does not have access to adequate health care. But any challenge to his conditions of confinement cannot be raised in this habeas proceeding. Such a challenge would need to be raised in a civil action. Petitioner himself indicates that he may be filing a separate civil action. The Court thus should not address those issues here in this habeas case.

BACKGROUND

A. Petitioner's immigration history and current detention

Petitioner is a native and citizen of Mexico. Ex. 1 (Declaration of John Mansur) at ¶ 4. He entered the United States unlawfully at an unknown location and date. *Id.* ¶ 5. He has not been admitted or paroled in the United States. *Id.* ¶ 6.

On November 3, 2011, ICE officers encountered Petitioner. *Id.* ¶ 7. ICE determined that that he was subject to removal and issued him a Notice to Appear

(NTA) that initiated removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review. *Id.*

The NTA charged Petitioner with being inadmissible to, and deportable from, the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien 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). *Id.* Petitioner then applied for asylum. *Id.* ¶ 8.

On April 17, 2019, the Immigration Judge (IJ) denied Petitioner's application for asylum and ordered him removed from the United States. *Id.* ¶ 9. The IJ denied withholding of removal under 8 U.S.C. § 1231(b) but granted withholding of removal under Article III of the Convention Against Torture. *Id.* ¶ 9. When both parties waived appeal, the IJ's order of removal became administratively final. *Id.*

At the time Petitioner was ordered removed, he was not in custody. *Id.* ¶ 10. When his order of removal was issued, he was placed on an order of supervision. *Id.* at ¶ 11.

On December 19, 2025, ICE officers encountered Petitioner and arrested him to enforce his final order of removal from the United States. *Id.* ¶ 12. ICE determined that the purposes of supervised release had been served and revoked Petitioner's release on supervision to enforce the order of removal. *Id.* ICE further determined that Petitioner poses a significant risk of flight given his final order and current efforts to remove him. *Id.* ¶ 12. Petitioner is currently detained under 8 U.S.C. § 1231 at ICE's Denver Contract Detention Facility. *Id.* at ¶¶ 12, 15.

ICE is currently pursuing Petitioner's removal to a third country pursuant to 8

U.S.C. § 1231 and is working in coordination with the U.S. Department of State to evaluate and select a third country for removal. *Id.* ¶ 14. In recent months, ICE has successfully executed removals to third countries and continues to do so. *Id.*

B. Petitioner's habeas petition

Petitioner filed his Petition for Writ of Habeas Corpus on December 24, 2025. ECF No. 1. In his Petition, he challenges his detention on a few different grounds.

First, he argues that his detention is not authorized by statute. He contends that ICE was authorized by statute to detain him only during his removal period, which he contends was limited to the initial 90 days after his order of removal was entered in April 2019. *Id.* at 5 ¶ 23 (citing 8 U.S.C. § 1231(a)(2)(A)). He argues that his detention is therefore unlawful because he was not taken into detention until more than six years after the issuance of his removal order. ECF No. 1 at 5 ¶ 24, 8 ¶ 46.

Second, Petitioner appears to challenge his detention on the ground that his removal is "not reasonably foreseeable because the Defendants are precluded from deporting him to Mexico" and have not yet taken steps "to attempt to deport him to a third country." *Id.* at 4 ¶ 20. He argues that Respondents would need to provide him with due process "if they are attempting to deport him to a third country. . ." *Id.* at 6 ¶ 36.

Third, Petitioner contends that he is suffering harm from his detention because he suffers from pulmonary issues and has not received his regular medication. *Id.* at 4 ¶ 17, 7 ¶¶ 37-40. He states that "because he is detained," his "health is deteriorating." *Id.* at 7 ¶ 38.

As relief, Petitioner seeks release from ICE detention. *Id.* at 9 ¶ 51. He also states that he is filing a "concurrent Complaint" for injunctive relief "against his removal from Colorado." *Id.* at 9 ¶ 52. As of this date, Respondents are unaware whether Petitioner has in fact filed a separate civil complaint.

C. The habeas proceeding

On December 29, 2025, the Court ordered Petitioner to "serve Respondents with copies of the Petition, Motion, and accompanying papers, along with a copy of this Order, by e-mail and by overnight mail . . . ." ECF No. 4. The Court also ordered, as relevant here, that "Within seven calendar days of service, Respondents are ORDERED TO RESPOND to the Petition and are ORDERED TO SHOW CAUSE as to why the Petition should not be granted." *Id.* The U.S. Attorney's Office received service by email on December 29, 2025, and service by overnight mail on December 30, 2025.

ARGUMENT

I. Petitioner's detention is authorized by statute.

Petitioner argues that his detention is not authorized by statute. ECF No. 1 at 4-5 ¶¶ 22-23. He relies on the fact that six years passed between the time he was ordered removed and when his detention began. *Id.* at 5 ¶ 24. He contends that detention of a noncitizen who is ordered removed is authorized only during the 90-day period after the removal order was entered. *Id.* at 5 ¶ 23 (citing 8 U.S.C. § 1231(a)(2)(A)). But as explained below, his detention after the initial removal period is indeed authorized by statute.

Congress has directed that noncitizens who are ordered removed should be

removed within 90 days and may be detained during that "removal period" to accomplish that purpose. The INA provides that "[e]xcept as 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," § 1231(a)(1)(A), and that "[d]uring the removal period, the Attorney General shall detain the alien." § 1231(a)(2)(A).

Not every noncitizen who is ordered removed is taken into custody and removed during that initial 90-day period. "[T]he Executive Branch . . . retains discretion over whether to remove a noncitizen from the United States." *United States v. Texas*, 599 U.S. 670, 679 (2023). For example, who ICE seeks to detain and remove may depend on resource constraints and practical obstacles. *Id.* (recognizing that in the decades since § 1231(a)(2) was enacted, "resource constraints necessitated prioritization in making immigration arrests"); *Johnson v. Guzman Chavez*, 594 U.S. 523, 546 (2021) (recognizing that "DHS routinely holds aliens under [8 U.S.C. § 1231(a)] when geopolitical or practical problems prevent it from removing an alien within the 90-day period.").

A decision by DHS not to detain and remove a noncitizen immediately after the noncitizen has been ordered removed does not bar DHS from later detaining and removing the alien. In general, "as we have held time and again, an official's crucial duties are better carried out late than never" because "a statutory rule that officials 'shall' act within a specific time does not by itself 'preclude[e] action later.'" *Nielsen v. Preap*, 586 U.S. 392, 411 (2019) (quoting *Barnhard v. Peabody Coal Co.*, 537 U.S. 149, 158 (2003)). More specifically, Congress has provided express authority for the

detention of noncitizens ordered removed *after* the initial removal period. "In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to . . . continue the detention of aliens if removal cannot be effectuated within the 90 days." *Guzman Chavez*, 594 U.S. at 546; *id.* at 541 ("'[T]he rest of § 1231 . . . contains specific provisions mandating or authorizing DHS to extend detention beyond 90 days . . . .").

Specifically, Congress has provided in Section 1231(a)(6) that certain aliens who are "ordered removed . . . may be detained beyond the removal period . . . ." 8 U.S.C. § 1231(a)(6); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022) ("§ 1231(a)(6) provides that after a 90-day removal period a noncitizen 'may be detained'" under certain circumstances) (internal quotation marks omitted); *Demore v. Kim*, 538 U.S. 510, 527 ("Section 1231(a)(6) provides . . . that when an alien who has been ordered removed is not in fact removed during the 90–day statutory "removal period," that alien "may be detained beyond the removal period" in the discretion of the Attorney General")

As relevant here, Section 1231(a)(6) permits the continued detention, past the removal period, of Petitioner on two grounds. First, 1231(a)(6) permits the continued detention of an alien who is "inadmissible" as that term is defined by the INA. Specifically, Section 1231(a)(6) provides in relevant part that "[a]n alien ordered removed who is inadmissible under section 1182 of this title . . . may be detained beyond the removal period . . . ." 8 U.S.C. § 1231(a)(6). Inadmissible aliens include those who are present in the United States but have never been admitted. 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien 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, is inadmissible."). As set forth above, Petitioner in inadmissible under this provision.

Second, Section 1231(a)6) further authorizes the continued detention of any noncitizen who has been determined by the government to be unlikely to comply with the order of removal. Specifically, Section 1231(a)(6) provides in relevant part that "[a]n alien ordered removed . . . who has been determined by the Attorney General to be . . . unlikely to comply with the order of removal, may be detained beyond the removal period . . . ." 8 U.S.C. § 1231(a)(6). This basis for continued detention applies to Petitioner too, as ICE has determined that Petitioner poses a significant risk of flight given his final order and current efforts to remove him. *Id.* ¶ 12.

Petitioner's detention is thus authorized by statute, twice over. Section 1231(a)(6) authorizes detention, even after the initial removal period, of noncitizens—like Petitioner—who have been ordered removed and who are inadmissible, as well as those who have been determined to be unlikely to comply with the order of removal.[2] And Petitioner fits both categories.

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[2] Section 1231(a)(6) does not define special procedures that must be followed for detention under that provision. It "says nothing about bond hearings before immigration judges . . . nor does it provide any other indication that such procedures are required." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022). And Petitioner does not identify any specific regulatory provision that he claims his continued detention has violated. *See Guzman Chavez*, 594 U.S. at 528–29 (observing that 8 CFR 241.4 sets forth "procedures DHS must follow to impose continued detention"). The regulations generally require various custody reviews. *See* 8 C.F.R. 241.4(k)(1) and (2). During those reviews, officials must consider both "[f]avorable factors" (such as "close relatives residing here lawfully") and unfavorable factors (such as "flight risk" and danger of "future criminal activity"). 8 C.F.R. 241.4(f)(5), (7), & (8)(iii). The noncitizen can submit evidence, use an attorney or other representative, and, if appropriate, seek a government-provided translator. 8 C.F.R. 241.4(h)-(i).

II. Petitioner has not shown that his detention violates due process under the standards set in *Zadvydas v. Davis.*

Petitioner also argues that his removal is "not reasonably foreseeable because the Defendants are precluded from deporting him to Mexico" and have not yet taken steps "to attempt to deport him to a third country." ECF No. 1 at 4 ¶ 20. With this statement, he appears to challenge his detention on the ground that it violates due process under the standards set forth in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), which uses that "reasonably foreseeable" phrasing. But Petitioner's *Zadvydas* challenge fails because his detention has been brief and because he has not met his burden to show that it will be indefinite.

"Section 1231(a)(6) does not expressly specify how long detention past the 90-day removal period may continue" for those subject to that provision. *Arteaga-Martinez*, 596 U.S. at 579. In *Zadvydas*, the Supreme Court ruled that § 1231(a)(6) cannot be interpreted, consistent with due process, as authorizing detention that is indefinite. It held that the detention authorized by § 1231(a)(6) is limited by due process to a period "reasonably necessary to secure removal" as well as to "assur[e] the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699.

The Court in *Zadvydas* then explained that detention under § 1231(a)(6) for six months is deemed "presumptively reasonable." *Id.* at 701. The Court explained that that it was "practically necessary to recognize some presumptively reasonable period of detention" in order to "guide lower court determinations" and "to limit the occasions when courts will need to make" difficult judgments. *Id.*

Since then, the Supreme Court has repeatedly adhered to six months as the

presumptively-reasonable period of detention under Section 1231(a)(6). *See Arteaga-Martinez*, 596 U.S. at 586 ("The 'presumptive reasonable' detention period, the Court declared [in *Zadvydas*], was six months."); *Jennings v. Rodriguez*, 583 U.S, 281, 298-99 (2018) (explaining that the Court in *Zadvydas* had determined that while § 1231(a)(6) did not impose any "statutory limit on the length of permissible detention," that "six months is a presumptively reasonable period") (quoting *Zadvydas*, 533 U.S. at 699). The six months thus defines the presumptively-reasonable period of *detention*, not the period since the order of removal was originally entered.

Accordingly, under *Zadvydas*, the government may, consistent with due process, presumptively detain a noncitizen ordered removed for six months.[3] Once the government has had that six months, then, "*[a]fter that point*, if the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must . . . rebut that showing . . . ." *Guzman Chavez*, 594 U.S. at 529 (emphasis added). In other words, *after* the six months passes, the noncitizen can seek to show that his detention will be indefinite. Then, at that point, the "onus is on the alien to 'provide[] good reason to believe" there is no significant likelihood of removal in the reasonably foreseeable future "*before* 'the

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[3] DHS has adopted regulations to implement the holding in *Zadvydas*. *See Guzman Chavez*, 594 U.S. at 529 (recognizing that the government's procedures for implementing *Zadvydas* are set forth in 8 CFR § 241.13). Under those regulations, if a noncitizen who has been detained for six months shows that "there is no significant likelihood of removal in the reasonably foreseeable future," adjudicators at ICE headquarters must review the noncitizen's case. 8 C.F.R. 241.13(d)(1). The noncitizen has the right to submit evidence, to respond to the government's evidence, and to use an attorney or other representative. 8 C.F.R. 241.13(e). Petitioner does not suggest that any of these regulations have been violated here.

Government must respond with evidence sufficient to make that showing.'" *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (emphasis added) (quoting *Zadvydas*, 533 U.S. at 701). In other words, the noncitizen must meet his burden *before* the government's evidentiary obligation is triggered.

In sum, *after* six months of detention, and *if* an alien has provided good cause to show there is no significant likelihood of removal in the reasonably foreseeable future, *then* the government may be required to show that there is a significant likelihood of removal in the reasonably foreseeable future.

Here, neither of those two threshold requirements has been met. First, Petitioner has not been in detention under § 1231(a)(6) for more than six months. It is thus premature for him to raise a *Zadvydas* challenge to whether there is a significant likelihood of his removal in the reasonably foreseeable future.[4] *Cf. Bokole v. McAleenan*, 1:18-cv-00583-JB-LF, 2019 WL 2024922, at *5 (D.N.M. May 8, 2019) (finding that the petitioner's claim challenging the constitutionality of his current detention was premature because the presumptively reasonable six-month period had

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[4] Given Petitioner's relatively brief period of detention, his circumstances are significantly different from those in *Munoz Ramirez v. Bondi*, where this Court determined that the detention for more than a year of an immigration detainee violated due process. *See Munoz Ramirez v. Bondi*, No. 25-cv-01002-RMR (D. Colo.), *appeal filed* (July 7, 2025). In that case, this Court ruled that "noncitizens detained under § 1231(a)(6) past the *Zadvydas* six-month presumptively constitutional period may bring an as-applied due process challenge to his or her detention under the statute." *See id.*, ECF No. 14 at 13 (citing *Arteaga-Martinez*, 596 U.S. at 583). But the Court also observed that the petitioner in that case had "been detained for more than 505 days—nearly three times the presumptive limit set forth in *Zadvydas*." ECF No. 14 at 11. Here, in contrast, Petitioner's detention under § 1231(a)(6) has been a matter of a few weeks. The Court thus should not extend its ruling in *Munoz Ramirez* to this case.

not yet expired).

Second, even if the six-month detention period had already passed (which it has not), Petitioner has not met his burden to provide good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future.

On that point, Petitioner argues that because he has been granted withholding of removal to Mexico, he cannot be removed to Mexico. ECF No. 1 at 5-6 ¶¶ 28-35. But that bar on his removal to Mexico does not show that he cannot be removed to another country. As the Supreme Court has explained, withholding of removal to one country does not bar removal of a noncitizen who has been ordered removed. "If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States. The removal order is not vacated or otherwise set aside. It remains in full force, and DHS retains the authority to remove the alien to any other country authorized by the statute." *Guzman Chavez*, 594 U.S. at 536. Congress has provided that noncitizens may be removed to a variety of countries. *See* 8 U.S.C. § 1231(b)(1)(C); *Guzman Chavez*, 594 U.S. at 536 (explaining that "the statute provides numerous options: a country designated by the alien; the alien's country of citizenship; the alien's previous country of residence; the alien's country of birth; the country from which the alien departed for the United States; and finally, any country willing to accept the alien").

Petitioner also contends that if he is designated for removal to a country other than Mexico, he would then be entitled to due process to challenge that designation. ECF No. 1 at 6 ¶ 36. But the possibility that there will be some sort of proceeding

before Petitioner could be removed to such a country is not sufficient to meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. The Tenth Circuit has held that even when a noncitizen has initiated a potentially lengthy judicial process to challenge a removal, the fact that the process will have an end point is enough to show that detention during that process will not be indefinite. *See Soberanes*, 388 F.3d at 1311 (explaining that a noncitizen had failed to show that his detention was "indefinite or potentially permanent like the detention held improper in *Zadvydas*" where he was detained during the time he was challenging his removal during a lengthy judicial review process, because that judicial review process would have "a definite and evidently impending termination point"); *accord Castaneda v. Perry*, 95 F.4th 750, 757-58 (4th Cir. 2024) (recognizing that because withholding-only proceedings are "finite," "ongoing withholding-only proceedings do not, standing alone, cast doubt on the foreseeability of an alien's removal in the future").

. Here, Petitioner has not shown that any process he would use to challenge his removal to a third country would be indefinite.

In sum, Petitioner has not met either threshold showing that would require the government, under *Zadvydas*, to rebut his challenge and show a significant likelihood of his removal in the reasonably foreseeable future. His due process challenge to his detention thus fails, and his challenge to his detention should be denied without prejudice. *Cf. Soberanes*, 388 F.3d at 1311 (recognizing that where a detainee in a habeas case fails to show that his prolonged detention violates due process, the court should dismiss the habeas petition without prejudice).

III. Any challenge to Petitioner's medical care cannot be brought in this habeas proceeding.

The Petition also mentions potential issues with Petitioner's medical care. He refers to "lifetime pulmonary issues" and alleges that he is not receiving proper care at the GEO facility. ECF No. 1 at 4 ¶ 17; *see id.* at 7 ¶ 38 (alleging that his "health is deteriorating").

To the extent Petitioner seeks to challenge his medical care—presumably by GEO, the contractor at the ICE contract detention facility in Denver—such a challenge cannot be raised in this habeas case. Petitioner filed this case as a habeas proceeding under 28 U.S.C. § 2241. ECF No. 1 at 3 ¶ 9. A person "who challenges the conditions of his confinement" may not do so through a habeas proceeding but "must do so through a civil rights action." *Palma-Salazar v. Davis*, 677 F.3d 1031, 1036 (10th Cir. 2012). Petitioner thus cannot challenge his conditions of confinement in this case. Petitioner may be intending to file a separate civil action. See ECF No. 1 at 9 ¶ 52 (stating that Petitioner is "filing a concurrent Complaint for Declaratory Judgment and injunctive relief"), but as of this filing he does not appear to have done so.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition, ECF No. 1, without prejudice.

Dated: January 6, 2026.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/Kevin Traskos
Kevin Traskos
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: kevin.traskos@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Kevin Traskos
Kevin Traskos
Assistant United States Attorney
Counsel for Respondents