IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00332-STV

HISSEIN SEIRO YAYA,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility owned and operated by GEO Group, Inc.;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office, U.S. Immigration & Customs Enforcement (ICE);
KRISTI NOEM, Secretary, U.S. Department of Homeland Security (DHS);
TODD LYONS, Acting Director Immigration and Customs Enforcement (ICE); and
PAM BONDI, Attorney General, U.S. Department of Justice (DOJ);

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 14)

Pursuant to the Court's February 11, 2026 Order, ECF No. 14, Respondents hereby respond to Petitioner Hissein Seiro Yaya's Petition for Writ of Habeas Corpus and Motion for a Temporary Restraining Order, ECF Nos. 1 and 2.

Petitioner, a Chadian national, was ordered removed on July 24, 2025, and at the same time was granted withholding of removal to Chad. Declaration of Shane Blea, attached as Exhibit A, ¶ 13. Petitioner's removal became administratively final on August 23, 2025. *Id.* ¶ 14. He has been detained since his order became final. In the Petition, Petitioner challenges his detention on the ground that it violates: (1) 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001); (2) substantive due process; and (3) procedural due process. ECF No. 1 at

¶¶ 53–65. As relief, Petitioner seeks, *inter alia*, release from immigration detention. *Id.* at 23. As explained below, his Petition should be denied because, at this point, his detention, which has been for less than six months since his final removal order was issued, is lawful.

FACTUAL BACKGROUND

Petitioner's entry into the United States. Petitioner is a native and citizen of Chad. Declaration of Shane Blea, attached as Exhibit A, ¶ 4. On July 10, 2024, U.S. Customs and Border Patrol (CBP) apprehended him at or near Lukeville, Arizona, shortly after he illegally entered the United States by crossing the United States-Mexico Border. *Id.* ¶ 5. He was neither inspected and admitted nor paroled into the United States. *Id.* Petitioner appears to have been continuously detained since his arrival in the United States in July of 2024. *See* ECF No 1(Petition) ¶ 12.

Transfer into ICE custody and progression of removal proceedings. Petitioner was transferred into ICE custody on July 23, 2024. *Id.* ¶ 7. On October 2, 2024, U.S. Citizenship and Immigration Services (USCIS) initiated removal proceedings against him, charging him with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) and 8 U.S.C. § 1182(a)(6)(A)(i) *Id.* ¶ 9.

Petitioner's application for asylum; removal and concession of removability. On January 8, 2025, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal. *Id.* ¶ 10. On January 13, 2025, Petitioner filed written pleadings in which he admitted he conceded removability as charged. *Id.* ¶ 11.

Hearing and order of removal. On July 18, 2025, the Immigration Judge (IJ) held a hearing on the merits of Petitioner's application. *Id.* ¶ 12. On July 24, 2025, the IJ issued a written decision in Petitioner's case. The IJ sustained the charges of inadmissibility and directed Chad as the country of removal; denied Petitioner's application for asylum; ordered Petitioner removed to Chad; but also granted Petitioner's application for withholding of removal to Chad under 8 U.S.C. § 1231(b)(3). *Id.* ¶ 13. Neither party appealed the IJ's order, and it became administratively final on August 23, 2025. *Id.* ¶ 14.

Events after final order of removal. On November 18, 2025, ICE conducted a Post Order Custody Review (POCR) pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 18. ICE determined that Petitioner did not satisfy the criteria for release because he posed a significant risk of flight pending removal and ICE expected to receive the necessary travel documents to effectuate removal. *Id.* ICE also determined that removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest. *Id.* On December 10, 2025, at Petitioner's request, ICE interviewed Petitioner. *Id.* ¶ 18. ICE is reviewing information from the interview and will use the information in a future POCR. *Id.*

Present status. It has not yet been six months since the order of removal became administratively final. *See Id.* ¶ 14. The Department of Homeland Security (DHS) and the U.S. Department of State are working in coordination to evaluate and select a third country for removal. *Id.* ¶ 20.

ARGUMENT

I. Petitioner's detention does not violate 8 U.S.C. § 1231(a)(6) or due process.

Petitioner claims that he is entitled to immediate release because his continued detention violates (1) 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001); (2) substantiative due process; and (3) procedural due process. ECF No. 1 ¶¶ 53-65.

In *Zadvydas*, the Supreme Court construed the provision of the Immigration and Nationality Act governing post-removal detention, 8 U.S.C. § 1231(a)(c), to contain an implicit "reasonable time" limitation to ensure that the detention does not violate process. 533 U.S. at 682. Since the Court in *Zadvydas* considered when post-removal order detention is consistent with due process, Petitioner's challenges to his detention merge into a single question: whether Petitioner's detention is lawful under the Supreme Court's decision in *Zadvydas*. Id. at 678.

The Court held that, consistent with due process, the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." *Id.* at 700-01. The six-month period discussed in *Zadvydas* refers to the period of detention during which the government seeks to execute the removal order. *See Guzman Chavez*, 594 U.S. at 529 (explaining that under *Zadvydas*, the "period reasonably necessary to bring about the alien's removal from the United States is presumptively six months"). The *Zadvydas* decision addressed the reasonable length of detention to *carry out* the removal order—i.e., *after* the order was issued.

Here, the six-month presumptively-reasonable period thus did not begin for Petitioner until his removal order became final. And it has been less than six months since the order of removal became administratively final. *See* Exhibit A, ¶ 14. Accordingly, at this time, his detention is lawful under *Zadvydas*.

If Petitioner's post-order detention continues past six months, he could seek to challenge his detention on the ground that it has become essentially indefinite. The Court in *Zadvydas* held that after six months of detention, "once the alien 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.*

But the government's burden to make this showing—of a significant likelihood of removal in the reasonably foreseeable future—is triggered only *after* the six-month period expires. Since *Zadvydas*, the Supreme Court has explained that the period reasonably necessary to bring about the alien's removal from the United States is "presumptively six months" and 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 (discussing *Zadvydas*) (emphasis added). *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 not yet expired).

Also, the Court determined, however, 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). "[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. *Zadvydas* rejected the proposition that continued detention is permissible "as long as good faith efforts to effectuate … deportation continue." *Id.* at 702 (internal quotations and citation omitted).

At this time, DHS has been seeking to effectuate Petitioner's removal consistent with the limits set by 8 U.S.C. § 1231(a) and *Zadvydas*. After Petitioner's request for withholding was granted, ICE began pursuing Petitioner's request for removal to alternative countries. *Id.* ¶ 16. The U.S. State Department and DHS are working to evaluate and select a third country for removal. *Id.* ¶ 20. Given that third-country removal efforts are ongoing, Respondents propose to submit a status report within thirty days concerning these efforts.

II. Petitioner's challenges to the process he would face in being removed to a third country are not properly presented here.

Petitioner alleges that his detention is unlawful and in violation of the Fifth Amendment because he is entitled to notice and a meaningful opportunity to challenge his continued detention and potential removal to a third country. ECF No. 1 ¶ 62. Because he has received allegedly inadequate process, Petitioner requests that the Court release him. *See id.* at ¶ 64–65. This challenge should be rejected on multiple grounds.

First, Petitioner's claim concerning removal to a third country also falls beyond the purview of a habeas proceeding, which is a special vehicle for challenges to *detention*. *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020) ("Habeas has traditionally been a means to secure *release* from unlawful detention." (emphasis in original)). Any objection Petitioner may have to any procedures that might be used to determine a third country to which she might be removed is not a challenge to his detention.

Second, Petitioner's claim regarding notice of his removal to a third country is not ripe. A third country has yet to accept Petitioner. Therefore, 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)).

Third, any future objection Petitioner may have to removal to a particular third country would likely overlap with the claims in a non-opt-out class action case pending

in another district. 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).

III. The Court's decision on Petitioner's habeas petition will moot the Motion for Temporary Restraining Order.

Because the Court has ordered simultaneous briefing on Petitioner's habeas petition and Motion for Temporary Restraining Order, the merits of the underlying habeas petition will be ripe for a decision. Once the Court rules on the habeas petition, that ruling will moot the Motion for a Temporary Restraining Order. *See Su v. Ascent Construction, Inc.*, 104 F.4th 1240, 1244 (10th Cir. 2024) (finding that where permanent relief is granted, a preliminary injunction merges into the final judgment and is moot) (*citing Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999)).

CONCLUSION

As set forth herein, Respondents respectfully request that this Court deny the Petition, or, if not, direct them to submit a status report within 30 days concerning their ongoing efforts to remove Petitioner.

Dated: February 13, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, I filed the foregoing with the Clerk of Court for the District of Colorado using the CM/ECF system.

s/ Elliot Wertheim
U.S. Attorney's Office