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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF COLORADO**

9 **HISSEIN SEIRO YAYA**

10 **Petitioner,**

11 **v.**

12 **WARDEN OF THE DENVER CONTRACT**
13 **DETENTION FACILITY, ET AL.,**

14 **Respondents.**

Case No.: 1:26-CV-00332-STV

PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO ORDER
TO SHOW CAUSE

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16 Petitioner, Mr. Hissein Seiro Yaya, through counsel, respectfully submits this reply to
17 Respondents' Response to the Court's Order to Show Cause. Respondents' opposition to Mr.
18 Yaya's habeas petition rests on two premises: (1) that the six-month presumptively reasonable
19 detention period has not yet not yet begun; and (2) that Respondents have been seeking to
20 effectuate Mr. Yaya's removal to a third country. ECF No. 18 ¶ 5, 6. However, Mr. Yaya argues
21 the habeas review is ripe per 8 U.S.C. § 1231(a)(1) and 8 U.S.C. § 1231(a)(6). Furthermore, he
22 has met his burden to show no significant likelihood of release or removal in the reasonably
23 foreseeable future. In contrast, the Government has not presented sufficient evidence to rebut this
24 showing.
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I. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Yaya has been in continuous detention since July 23, 2024 when he entered the United States. ECF No. 19 ¶ 2. Almost one year later, on July 18, 2025, the Immigration Judge (IJ) held a hearing on the merits of Petitioner’s application for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). *Id.* ¶ 3. The IJ issued a written decision in Petitioner’s case on July 24, 2025 wherein the IJ reserved appeal for both parties. *Id.* The IJ granted Petitioner withholding of removal from Chad under 8 U.S.C. § 1231(b)(3). *Id.* As Respondent’s explain, on November 18, 2025, ICE conducted a Post Order Custody Review (POCR). ECF No. 18 ¶ 3. Although ICE determined Mr. Yaya posted a significant flight risk pending removal, no further explanation was given. *Id.* On December 10, 2025, Petitioner received an ICE interview. *Id.* Since then, Respondents’ explain, “ICE is reviewing information from the interview and will use the information in a future POCR.” *Id.* Respondents state the Department of Homeland Security (DHS) and the U.S. Department of State are working to evaluate and select a third country for removal. *Id.* On January 22, 2026, Mr. Yaya submitted a habeas petition requesting release from detention and served all parties. ECF Nos. 1, 12. On February 13, 2026, Respondents submitted a response. ECF No. 18. As of February 23, 2026, Mr. Yaya has been in continuous detention for a total of about nineteen (19) months and a total of about seven (7) months since the IJ issued the written decision.

II. ARGUMENT

A. Habeas Review is Appropriate After the Mandatory 90-Day Removal Period.

When a noncitizen is ordered removed from the United States, “the Attorney General is obliged to facilitate that individual’s actual removal within 90 days.” *Morales-Fernandez v. INS*,

1 418 F.3d 1116, 1123 (10th Cir. 2005)(citing 8 U.S.C. § 1231(a)(1)). Once 90 days has elapsed,
2 detention is authorized per 8 U.S.C. § 1231(a)(6) under certain circumstances. *Id.* However, once
3 removal “is no longer reasonably foreseeable, continued detention is no longer authorized.” *Id.*
4 (citing *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001)). Moreover, the post-removal period of
5 detention is limited to a period “reasonably necessary to bring about that [noncitizens] removal
6 from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574 (2022)(citing
7 *Zadvydas*, 533 U.S. at 689).

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10 Although Respondents argue the presumptive six-month mark has not been reached,
11 *Zadvydas* applies this presumption as a reasonableness benchmark, not a jurisdictional
12 prerequisite. *See Cruz Medina v. Noem*, 795 F.Supp.3d 365, 375 (D. Md. Aug. 11, 2025)(citing
13 *Munoz-Saucedo*, 789 F.Supp.3d 387, 397 (D.N.J. June 24, 2025); *Cesar v. Achim*, 542 F.Supp.2d
14 897, 904 (E.D. Wis. 2008)) (“But if a petitioner “claim[s] and *prove[s]*. . . that his removal is not
15 reasonably foreseeable”—including during the six-month period—the petitioner “can overcome
16 that presumption” and detention is no longer authorized. . . . “To hold otherwise”—in other
17 words, to suggest that courts only begin to inquire into whether detention is reasonably
18 foreseeable after the expiration of the six-month period—“would condone detention in cases
19 where removal is not reasonably foreseeable or even functionally impossible, so long as it did
20 not exceed six months.”). Thus, judicial review is appropriate once detention extends beyond the
21 90-day mandatory removal period and becomes discretionary under § 1231(a)(6). *See Soberanes*
22 *v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004).

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25 Here, as of Respondents August 23, 2025 date, the 90-day period has expired *and* the six-
26 month presumptive period expires as of February 23, 2026—a mere six days from this filing.
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1 More importantly, as outlined below, Mr. Yaya's removal was not effectuated during the
2 mandatory 90-day period, was also not effectuated during the last approximately three months,
3 and there is no significant likelihood of removal in the future. Meanwhile, ICE gave no reason
4 for why Mr. Yaya would present a flight risk, although he has a strong sponsor and could be
5 residing with his United States Citizen uncle, Mr. Ahmed Abakar, in Fort Wayne, Indiana. Thus,
6 Mr. Yaya requests release from custody. *See* ECF No. 1 ¶ 9.
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8 **B. Mr. Yaya has Met His Burden to Show No Significant Likelihood of Removal in**
9 **the Reasonably Foreseeable Future.**
10

11 The onus is first on the noncitizen to provide good reason to believe his detention
12 exceeds a period reasonably necessary to secure removal. *Soberanes v. Comfort*, 388 F.3d at
13 1311 (citing *Zadvydas*, 533 U.S. at 699). Thereafter, "the Government must respond with
14 evidence sufficient to rebut that showing." *Id.* However, in proving his burden, Petitioner need
15 not show removal will prove "impossible." *Zadvydas*, 533 U.S. at 702. Instead, the "significant
16 likelihood" standard applies. *Soberanes v. Comfort*, 388 F.3d at 1311.
17

18 Here, the IJ granted Mr. Yaya withholding of removal and, therefore, he cannot be
19 removed to Chad. Per 8 U.S.C. § 1231(b)(C)(i)-(iv): Removal shall be to any of the following
20 countries, as directed by the Attorney General:
21

- 22 (i) The country of which the alien is a citizen, subject, or national.
23 (ii) The country in which the alien was born.
24 (iii) The country in which the alien has a residence.
25 (iv) A country with a government that will accept the alien into the country's
26 territory if removal to each country described in a previous clause of this
27 subparagraph is impracticable, inadvisable, or impossible.
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1 Mr. Yaya is a citizen and national of Chad whose only country of residence was Chad
2 before coming to the United States. *See* ECF No. 1 ¶ 8. Hence, it is not only impractical,
3 inadvisable, but impossible for him to return to Chad, per the IJ’s order.
4

5 During and after Mr. Yaya’s PO CR interview, ICE did not provide him with the results
6 of his interview. ECF No. 18 ¶ 3. ICE also provided no evidence as to why he posed a significant
7 flight risk pending removal, despite having a viable sponsor, his biological uncle, Mr. Ahmed
8 Gardi, who is a United States Citizen living and working in Indiana. *See* ECF No. 1 ¶ 9, ECF No.
9 18 ¶ 3. Instead, Respondents concede ICE is only “reviewing information from the interview
10 and will use the information in a future PO CR.” ECF No. 18 ¶ 3. However, a timeline for the
11 next PO CR was not given. Civil detention is permissible only where it bears a reasonable
12 relation to its purpose. *Zadvydas*, 533 U.S. at 690. *See also Ahrach v. Baltazar*, No. 25-cv-
13 03195-PAB, 2025 WL 3227529, at *5 (D.C. Col. Nov. 19, 2025)(holding under *Zadvydas*, flight
14 risk has no bearing on the constitutionality of her continued detention when removal seems a
15 remote possibility).
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18 Furthermore, Respondents concede they only are working to evaluate and select a third
19 country for removal. ECF No. 18 ¶ 6. They request to submit a *status report* within thirty (30)
20 days—well beyond the six month post-removal order period of detention. *Id.* Where removal to
21 the country of nationality is prohibited and no alternative country has accepted the individual,
22 continued detention becomes constitutionally suspect. *See Zadvydas*, 533 U.S. at 686
23 (recognizing detention concerns where no country will accept the noncitizen). Thus, Mr. Yaya
24 has met his burden.
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1 **C. No Third Country Has Been Identified or Has Accepted Mr. Yaya, Thus**
2 **Respondents Claims Are Purely Speculative.**
3

4 Respondents are unable to rebut Mr. Yaya’s showing that removal is reasonably
5 foreseeable by providing sufficient evidence. Instead, they concede a “third country has yet to
6 admit Petitioner.” ECF No. 18 ¶ 7. However, detention is lawful only as long as “good faith
7 efforts to effectuate . . . deportation continue.” *Zadvydas*, 533 U.S. at 702.

8 Although Respondents claim Mr. Yaya’s argument regarding notice of his removal to a
9 third country is not ripe, they fully admit they are looking for a third country in which to remove
10 him. ECF No. 18 ¶ 7. The ripeness argument fails, as indeed Respondents have an aspiration of
11 removing Petitioner to a third country. Nevertheless, Respondents have only held one POCR and
12 an interview in which they stated he was a flight risk, without more. ECF No. 18 ¶ 3.

13 The Declaration of Shane Blea states, “DHS and the Department of State are working in
14 coordination to evaluate and select a third country for removal.” ECF No. 19 ¶ 4-5. However,
15 nothing in this declaration makes a *concrete* showing of evidence. Respondents have provided no
16 specific receiving country, no acceptance by any country, no travel documents, no removal date,
17 and no projected timeline. Respondents make clear they only anticipate the hypothetical
18 possibility of a third country removal, making general and vague assertions. In sum, nothing in
19 Respondents’ response or Officer Shane Blea’s declaration effectively rebuts Mr. Yaya’s
20 contention that there is no significant likelihood of removal in the reasonably foreseeable future.
21 In fact, Respondents request thirty (30) additional days to merely provide a status report
22 regarding third-country efforts. ECF No. 18 ¶ 6. The very request confirms the absence of a
23 likelihood of removal.
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1 Consequently, Respondents have not shown they are actually making good faith efforts
2 towards removal. *Ahrach v. Baltazar*, 2025 WL 3227529, at *4 (citations omitted)(where after
3 seven months, Respondents had not shown progress, soliciting Mexico, Guatemala, and Panama
4 without response and not following up on the efforts). District of Colorado courts consistently
5 require concrete evidence of removal feasibility. *See Aguilar v Lyons*, No. 25-cv-03463-NYW,
6 2025 WL 3514282, at *5 (D. Colo. Dec. 8, 2025)(holding ICE’s argument unpersuasive that they
7 only began the process of pursuing removal to an alternative country two months after petitioner’s
8 grant of withholding); *Fadwa v. Lyons*, No. 25-cv-03660-PAB, 2025 WL 3525026, at *6 (D.
9 Colo. Dec. 9, 2025)(“[T]here is no reason for the Court to believe removal would be any closer
10 in 30 days when respondents’ diligent efforts have not led to Mr. Fadwa’s removal in the past ten
11 months”); *Ali v. Baltazar*, No. 25-cv-03317-RBJ, 2026 WL 322565 (D. Colo. Jan. 27,
12 2026)(where petitioner convicted of several state criminal offenses was held for six months and
13 released). Other district courts have ruled similarly. *See Vishal v. Chestnut*, 2025 WL 3511815,
14 at *3 (E.D. Cal. Dec. 8, 2025)(where declaration of a deportation officer did not provide “any
15 details whatsoever regarding what actions have been and are being taken in pursuing Petitioner’s
16 removal to a third country)(citing also *Nguyen v. Scott*, 796 F. Supp. 3d 703, 725 (W.D. Wash.
17 2025); *Singh Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma v. Asher*,
18 No. C11-1797-MJP, 2012 WL 1432229, at *4-5 (W.D. Wash. Apr. 25, 2012); *Hoac v. Becerra*,
19 No. 25-cv-01740-DC-JDP, 2025 WL 1993771, at #3 (E.D. Cal. July 16, 2025).

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III. CONCLUSION

Mr. Yaya has now been detained beyond both the mandatory 90-day removal period *and* the six-month presumptive period as of February 23, 2026. The Government has not identified a receiving country, obtained acceptance, or provided any concrete evidence of a third country removal. Instead, their efforts are speculative. Under 8 U.S.C. § 1231, *Zadvydas v. Davis*, *Soberanes v. Comfort*, and consistent with District of Colorado precedent, Respondents have not demonstrated that removal is significantly likely in the reasonably foreseeable future.

Therefore, Mr. Yaya respectfully requests that this Court:

- 1) Grant the Petition for Writ of Habeas Corpus;
- 2) Order Petitioner's release under appropriate supervision; and
- 3) Deny Respondents' request for additional time.

Respectfully submitted this 17th day of February, 2026.

/s/ Barbara Zalewski-Zaragoza

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Certificate of Service

I hereby certify that on February 17, 2026, I filed the foregoing with the Clerk of Court for the District of Colorado using the CM/ECF system.

/s/ Barbara Zalewski-Zaragoza

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