

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

Civil Action No. 26-cv-00443-NYW

ERCAN KOCA,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security,
TODD M. LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement,
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office, Immigration and Customs Enforcement, and,
JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility,

Respondents.

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

Pursuant to the Court's February 6, 2026 Order, ECF No. 4, Respondents hereby respond to Petitioner Ercan Koca's Application for a Writ of Habeas Corpus, ECF No. 1 (filed February 5, 2026) (the "Petition"). Pursuant to 28 U.S.C. § 2241, Petitioner asserts that his continued detention by Immigration and Customs Enforcement (ICE) violates 8 U.S.C. § 1231(a)(6), his due process rights under the Fifth Amendment of the United States Constitution, and the Administrative Procedure Act (APA). ECF No. 1 ¶¶ 55-69. Petitioner further alleges that because he was granted withholding of removal to his native country, Turkey, under *Zadvydas v. Davis*, 533 U.S. 678 (2001), his removal to a

third country is not likely to occur in the reasonably foreseeable future. *Id.* ¶¶ 59-62.

Thus, he seeks immediate release from the custody of Immigration and Customs Enforcement (ICE). *Id.* at 15.

FACTUAL BACKGROUND

Petitioner's encounter with Customs and Border Protection. Petitioner is a native and citizen of Turkiye (Turkey). Ex. A, Declaration of Irma Quinones (February 17, 2026) ¶ 4. On December 7, 2024, the United States Customs and Border Protection (CBP) apprehended Petitioner at or near Campo, California, shortly after he had unlawfully entered the United States by crossing the United States-Mexico border. *Id.* ¶ 5. He was not inspected, admitted, or paroled in the United States. *Id.*

CBP determined that Petitioner was inadmissible to the United States, and he 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.* ¶ 6; *see also* 8 U.S.C. § 1225(b)(1). Petitioner did not claim a fear of persecution if returned to Turkey. *Id.*

On December 16, 2024, Petitioner was transferred to ICE custody at the Adams Country Correctional Center in Natchez, Mississippi, to effectuate his removal to Turkey. *Id.* ¶ 7. Shortly thereafter, he was transferred to the Denver Contract Detention Facility (CDF) in Aurora, Colorado. *Id.* ¶ 8.

Petitioner's claimed fear of persecution. On or about December 27, 2024,

Petitioner claimed a fear of persecution if returned to Turkey. *Id.* ¶ 9. 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.*

On January 24, 2025, USCIS determined that Petitioner had established a credible fear of persecution or reasonable probability of persecution if removed to Turkey. *Id.* ¶ 10.

Removal proceedings. On February 10, 2025, USCIS exercised its discretion to issue a Notice to Appear (NTA) and transfer Petitioner from expedited removal proceedings to removal proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review (EOIR). *Id.* ¶ 11. Petitioner was charged with being inadmissible to the United States on two grounds. First, Petitioner was charged under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen 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.” *Id.* Second, Petitioner was charged under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as a noncitizen seeking admission to the United States who is not in possession of valid entry documents as required under § 1181(a). *Id.*

On March 19, 2025, Petitioner admitted the allegations and charges in the NTA in filed written pleadings with EOIR. *Id.* ¶ 12.

On June 25, 2025, Petitioner filed an Application for Asylum and for Withholding of Removal (Form I-589) with EOIR. *Id.* ¶ 13. On the same date, Petitioner appeared before the Immigration Judge (IJ) for an individual hearing on the merits of his

application. *Id.* ¶ 14.

On July 7, 2025, in a written decision, the IJ sustained the charges of inadmissibility in the NTA, denied Petitioner's application for asylum, and ordered him removed to Turkey. *Id.* ¶ 15. However, the IJ granted Petitioner's application for withholding of removal to Turkey under 8 U.S.C. § 1231(b)(3). *Id.* The IJ reserved the parties' right to appeal the decision. *Id.*

Order of removal. Neither party appealed the IJ's decision. *Id.* ¶ 15. The IJ's decision became administratively final on August 6, 2025. *Id.* ¶ 16.

Petitioner's detention under § 1231(a). After the IJ entered the final order of removal, Petitioner was detained under 8 U.S.C. § 1231(a), which authorizes the detention of noncitizens ordered removed from the United States. *Id.* ¶ 17.

On October 23, 2025, ICE served Petitioner with a Notice of File Custody Review, which advised him that ICE will review his custody status and potential for release on an order of supervision. *Id.* ¶ 19. On October 24, 2025, ICE conducted a Post Order Custody Review pursuant to 8 C.F.R. § 241.4, and determined that Petitioner did not satisfy the criteria for release because he posed a significant flight risk. *Id.* ¶ 20.

After the POOCR, Petitioner requested a personal interview in support of his release. *Id.*

On November 20, 2025, ICE conducted a panel interview with Petitioner. *Id.* ¶ 21.

On January 22, 2026, ICE conducted a POCR pursuant to 8 C.F.R. § 241.4 and determined that Petitioner had not satisfied the criteria for release under 8 C.F.R. § 241.4(e). *Id.* ¶ 22. ICE continued to detain Petitioner. *Id.*

Petitioner's habeas application. Petitioner, through counsel, filed this action in the District of Colorado on February 5, 2026. *See generally* ECF No. 1. In the Petition, he asserts four claims against Respondents. First, a violation of substantive due process under the Fifth Amendment as interpreted by the Supreme Court in *Zadvydas* because his removal is not significantly likely in the reasonably foreseeable future. *Id.* ¶¶ 55-58. Second, he alleges a statutory violation under 8 U.S.C. § 1231(a)(6). *Id.* ¶¶ 59-62. Third, a violation of procedural due process under the Fifth Amendment because of Respondent's alleged failure to provide notice and an opportunity to seek protection from third-country removal in violation of *Gomez v. Mattos*, No.: 2:25-cv-00975-GMN-BNW, 2025 WL 3101994 (D. Nev. November 6, 2025). *Id.* ¶¶ 63-65. Fourth, he asserts violations of the APA related to Respondents' alleged failure to follow custody procedures under 8 C.F.R. §§ 241.4, 241.13, under 5 U.S.C. § 706(1) because of Respondents' alleged unreasonable delay in either removing or releasing Petitioner, and under 5 U.S.C. § 706(2)(A) because of Respondents' "surprise" third-country removal policy. *Id.* ¶¶ 66-69.

On February 6, 2026, the Court ordered Respondents to show cause as to why the Petition should not be granted within seven days of service. *See* ECF No. 4. The U.S. Attorney's Office was served on February 9, 2026, via mail and February 10, 2026,

via email. Respondents' deadline to respond is February 17, 2026.

ARGUMENT

8 U.S.C. § 1231(a) provides for the "detention, release, and removal of [noncitizens] ordered removed." 8 U.S.C. § 1231(a). 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).

Upon expiration of the ninety-day mandatory removal period, the government may detain a noncitizen, such as Petitioner, in limited circumstances. 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 . . ." Following the expiration of the removal period, continued detention of noncitizens who are inadmissible is entrusted to DHS's discretion. See 8 U.S.C. § 1231(a)(6).

The Supreme Court held in *Zadvydas* that 8 U.S.C. § 1231(a)(6) permits continued detention beyond the initial removal period only so long as the detention does not violate due process. 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. However, 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).

Here, Petitioner’s order of removal became administratively final on August 6, 2025, after expiration of the appeal period. *See* Ex. A ¶ 16; *see also* 8 U.S.C. § 1231(a)(1)(B). Thus, the ninety-day removal period concluded on November 4, 2025 (90 days after August 6, 2025). To date, Petitioner has been detained for approximately six months (195 days) since his removal order became final.

Petitioner asserts that he cannot be removed to his native country, Turkey, because he has been granted withholding of removal, and that Respondents have failed to show that his removal to a third country is likely to occur in the reasonably foreseeable future. *See* ECF No. 1 ¶¶ 55-58.

At this time, Respondents do not have information to present to the Court concerning their efforts to remove Petitioner to a third country. If the Court so orders,

Respondents will submit a status report within thirty days concerning the status of their efforts to remove Petitioner.

Respondents anticipate that this Court's ruling on Petitioner's due-process claim as described in *Zadvydas* will resolve this habeas petition. If the Court grants the petition on this ground, it should decline to address additional arguments. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."); see also *Tamayza Fadwa v. Lyons*, No. 25-cv-03660-PAB, 2025 WL 3525026, at *4 (D. Colo. December 9, 2025) ("Because the Court will grant habeas relief on [Petitioner's] *Zadvydas* claim, it need not address his other claims or determine the appropriate standard for analyzing those claims."). But if the Court wishes to receive additional briefing on any other issue, Respondents request that the Court issue an order directing Respondents to address such issues.

Dated: February 17, 2026.

PETER MCNEILLY
United States Attorney

s/ Erika A. Kelley
Erika A. Kelley
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0103
Email: erika.kelley@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, 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:

Mehmet Yigit Turkoglu
mturkoglu@mytlegal.com

Counsel for Petitioner

I further certify that on February 17, 2026, I sent the foregoing via email to the following individual as a representative of Respondents.

C. Kasperson
ICE Counsel

s/ Erika A. Kelley
U.S. Attorney's Office