IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00616-RBJ

BAHAA HAMDI HAMED ARAMIN,

Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility; and
ROBERT HAGAN, Field Director of the Denver Field Office,

Respondents.

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

In accordance with the Court's Order dated February 17, 2026, ECF No. 4, Respondents respond to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, ECF No. 1 (filed 2/17/26).

The Petition should be denied. Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6), because Petitioner is "inadmissible" under 8 U.S.C. § 1182, which he does not contest. The burden, then, is on Petitioner to show that his detention while awaiting removal violates due process under the standards prescribed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner has not met that burden, and Respondents' evidence shows ICE has been pursuing steps to effectuate Petitioner's removal, and his removal to the Palestinian Territories (the country he designated) is significantly likely in the reasonably foreseeable future. In the current fiscal year, ICE has successfully removed multiple Palestinians to the Palestinian Territories using the same method ICE is pursuing in this case. ICE has requested authority from

the Israeli government to transport Petitioner to the Palestinian Territories via Israel and presently has no reason to believe that request will be denied.

Petitioner has not shown that any failure to follow the relevant procedures for removal to a third country gives rise to a ripe claim or would entitle him to habeas relief. Indeed, ICE is not pursuing his removal to a third country.

BACKGROUND

Petitioner pleads he is a citizen of Palestine. ECF No. 1 ¶ 1. He entered the United States without inspection in October 2024 and was not admitted or paroled into the United States. ECF No. 1 ¶ 26; *see also* **Exhibit A**, Decl. of Kurt Nissen ¶ 4.

U.S. Citizenship and Immigration Services ("USCIS") issued Petitioner a Notice to Appear, initiating removal proceedings, on November 1, 2024. Nissen Decl. ¶ 12. The Notice to Appear charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), because he was present in the United States without being admitted or paroled, and 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *Id.* Petitioner admitted the allegations and conceded removability as charged in the Notice to Appear in an appearance before an immigration judge. *Id.* ¶ 13. Petitioner designed Palestine as the country of removal, and the immigration judge designated Israel in the alternative. *Id.*

On July 11, 2025, an immigration judge denied Petitioner's request for asylum and protection from removal and ordered him removed to the Palestinian Territories, or, alternatively, to Israel. *Id.* ¶¶ 14-17. Plaintiff did not appeal this decision. *Id.* ¶ 18. The

removal order became administratively final on August 10, 2025. *Id.*

Petitioner is in custody awaiting removal. *Id.* ¶ 28. ICE conducted a Post Order Custody Review pursuant to 8 C.F.R. § 241.4, after giving Petitioner notice of the criteria that ICE would consider and advising that Petitioner could submit documents in support of his release. *Id.* ¶¶ 22-23. After review, ICE determined that Petitioner did not satisfy the criteria for release, because he failed to demonstrate that, if released, he would not pose a significant risk of flight pending removal from the United States. *Id.* ¶ 23.

ICE has been taking steps to effectuate Petitioner's removal to the Palestinian Territories. On December 12, 2025, ICE submitted a request to the Consul General of Israel for authorization to remove Petitioner to the Palestinian Territories via Israel. *Id.* ¶ 24. ICE is awaiting approval of its request from Israel. *Id.* On December 16, 2025, ICE submitted a travel document request to the Consul General of Israel. *Id.* ¶ 25. The travel document will be approved once the Israeli government authorizes Petitioner's transit through Israel to the Palestinian Territories. *Id.* In the current fiscal year, ICE has successfully removed multiple Palestinians via Israel in a similar manner. *Id.* ¶ 27. Petitioner is a priority for removal and remains detained pending removal. *Id.* ¶ 28.

Petitioner filed this habeas case six months and seven days after his order of removal became administratively final. In the Petition, Petitioner asserts five separately-labeled claims, contending that: (1) his detention violates 8 U.S.C. § 1231(a); (2) his detention violates substantive due process; (3) there is no likelihood of his removal under *Zadvydas*; (4) his procedural due process rights may be violated, related to his notice and opportunity to challenge his potential removal to a third country; and (5) the designation of a country for Petitioner's

removal may violate 8 U.S.C. § 1231(b). These claims can be resolved by answering three questions: whether Petitioner's detention is authorized by statute; whether Petitioner's detention violates the due process protections of the Constitution; and whether Respondents have violated the statutory requirements for removal, which Petitioner acknowledges has not occurred. He seeks a declaration that his detention violates the INA and the Due Process Clause of the Fifth Amendment, an order enjoining Respondents from removing him to a third country without following proper procedures, and an order releasing him from custody under "reasonable conditions of release." *See* ECF No. 1 at 13.

ARGUMENT

I. Petitioner's detention is authorized by statute.

Petitioner argues that his detention is not authorized by statute. *See* ECF No. 1 ¶¶ 33-35. He contends that detention of a noncitizen who is ordered removed after the initial 90-day removal period is permissive (not mandatory) and is unjustified. *Id.* ¶¶ 34-35. 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," 8 U.S.C. § 1231(a)(1)(A), and that "[d]uring the removal period, the Attorney General shall detain the alien." *Id.* § 1231(a)(2)(A).

Not every noncitizen who is ordered removed is removed during that initial 90-day removal period. *See Zadvydas*, 533 U.S. at 701 ("we doubt that when Congress shortened the

removal period to 90 days in 1996 it believed that all reasonably foreseeable removals could be accomplished in that time"). The 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, whether ICE seeks to detain and remove an individual may depend on resource constraints and practical obstacles. *See 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").

Congress has provided in § 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) (quotation marks omitted); *Demore v. Kim*, 538 U.S. 510, 527 (2003) ("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, § 1231(a)(6) permits the continued detention, past the removal period, of Petitioner on two grounds. First, § 1231(a)(6) permits detention of an alien who is "inadmissible" as that term is defined by the INA. Specifically, § 1231(a)(6) provides 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). As set forth above, Petitioner is inadmissible under this provision. *See* Nissen Decl. ¶¶ 12-13 (Notice to Appear issued to Petitioner charged him as inadmissible under 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), and noting Petitioner conceded removability as charged).

Second, § 1231(a)(6) also authorizes the continued detention of any noncitizen who has been determined by the government to be unlikely to comply with the order of removal. That provision 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, because his post-order custody review concluded that he failed to show that he was not a significant risk of flight given his final order and current efforts to remove him. *See* Nissen Decl. ¶¶ 23, 26 (discussing Petitioner's custody review).

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.[1] And Petitioner fits both categories. Petitioner's detention does not violate the INA.

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

In Counts Two and Three, Petitioner argues that his removal violates due process under the standards set forth in *Zadvydas*. ECF No. 1 ¶¶ 36-48. But this challenge fails because Petitioner has not met his burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

"Section 1231(a)(6) does not expressly specify how long detention past the 90-day

[1] 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." *Arteaga-Martinez*, 596 U.S. at 581.

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 Supreme Court 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.* The Court also emphasized the need for district courts to "take appropriate account of the greater immigration-related expertise of the Executive Branch" and its "serious administrative needs and concerns" in enforcing the INA, and of "the Nation's need to 'speak with one voice' in immigration matters." *Id.* at 700.

Since then, the Supreme Court has repeatedly adhered to six months as the presumptively reasonable period of detention under § 1231(a)(6). *See Arteaga-Martinez*, 596 U.S. at 586 ("The 'presumptively reasonable' detention period, the Court declared [in *Zadvydas*], was six months.") (Thomas, J., concurring); *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") (citing *Zadvydas*, 533 U.S. at 697, 701).

"*After that point*"—beyond six months—"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, quoting *Zadvydas*, 533 U.S. at 701). In other words, *after* the presumptively reasonable detention period passes, the noncitizen can seek to show that his detention will be indefinite. 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 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, *if* the noncitizen meets his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future, *then* the government's evidentiary obligation to show likelihood of removal is triggered.

Here, the order of removal became final less than seven months ago. Because six months have passed, it is Petitioner's burden to provide good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future, and he fails to carry that burden. He alleges that DHS "was unable to remove him during the ninety-day removal period" and his "removal is not foreseeable." ECF No. 1 ¶ 39. These facts are insufficient to meet his burden under *Zadvydas*—even setting aside Respondents' evidence of plans and efforts to remove Petitioner to the Palestinian Territories, his designated country of removal. *See* Nissel Decl. ¶¶ 6, 12, 24-25, 27-28.

Specifically, Petitioner argues that, because he has not yet been removed, his "removal is not foreseeable." ECF No. 1 ¶ 39; *see also id.* ¶ 42 ("The government has been unable to remove Mr. Aramin for over six months"); *id.* ¶ 47 ("DHS was unable to remove him during the

ninety-day removal period" and "has so far been unable to remove" him). Petitioner also argues that ICE has given him "no indication that he will be removed in the reasonably foreseeable future." *Id.* ¶ 42. However, simply because removal has not yet occurred does not mean that removal is not significantly likely to occur in the reasonably foreseeable future.

In sum, Petitioner has not met his burden under *Zadvydas* to show that there is no significant likelihood of removal in the foreseeable future. *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). Even if he had, Respondents have shown that his removal is significantly likely in the reasonably foreseeable future, as other similarly situated noncitizens have been removed to the Palestinian Territories in the same manner.

Should the Court nevertheless order Petitioner released on an order of supervision, this release would be subject to conditions to be set by ICE, as permitted by statute and regulation and as the Supreme Court has recognized.[2]

III. Petitioner's claims regarding notice of Petitioner's removal to a third country fail.

In Counts Four and Five, Petitioner alleges that Respondents have violated (or, more accurately, might in the future violate) his statutory rights regarding selection of a third country for removal under 8 U.S.C. § 1231(b)(2) and constitutional procedural due process rights by

[2] 8 U.S.C. § 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. DHS has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700. Accordingly, if Petitioner is released, his release may be governed by conditions of supervised release set by ICE pursuant to the regulations.

preventing him from seeking protection from removal to a third country. *See* ECF No. 1 ¶¶ 49-57.

To the extent Petitioner challenges a potential removal to a third country that has not been identified, that challenge is not yet ripe. Respondents have not identified a third country to which Petitioner may be removed—and likely will never need to do so, given that Petitioner has been ordered removed to the Palestinian Territories, where ICE has successfully removed other noncitizens recently. *See* Nissen Decl. ¶ 27. "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (quotation marks omitted). Even if it were to become necessary in the future to identify an alternative third country for removal, there is no basis to find at this time that ICE is unlikely to provide Petitioner sufficient notice and opportunity to challenge such removal.

Moreover, any future objection Petitioner may have to the procedures relating to his removal to a particular country would not be a habeas challenge to the legality of his custody, and the appropriate relief would not be release. Habeas claims challenge whether a petitioner is in custody in violation of law. *See* 28 U.S.C. § 2241(c)(3). A proper § 2241 petition challenges "the fact or duration of a prisoner's confinement and seeks the remedy of immediate release or a shortened period of confinement." *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) (quoting *Rhodes v. Hannigan*, 12 F.3d 989, 991 (10th Cir. 1993)). Assuming, for the sake of argument, that Petitioner were due additional procedures with respect to removal, that procedural failure would not result in Petitioner's release from custody.

Thus, even if the Court had jurisdiction to review such a claim, the remedy would be to

require ICE to comply with § 1231(b)(2) before removing Petitioner to a country other than the Palestinian Territories or Israel. *See Baltodano v. Bondi*, No. 25-cv-1958-RSL, 2025 WL 3484769, at *6-7 (W.D. Wash. Dec. 4, 2025) (ordering that ICE must provide the petitioner with notice and a meaningful opportunity to respond in third-country removal proceedings). The remedy for lack of process, to the extent Petitioner's claim is cognizable, is to require the proper process.[3]

Petitioner thus is not entitled to release on the basis of anticipated, inadequate notice of third-country removal.

CONCLUSION

The Court should deny the Petition, ECF No. 1, without prejudice.

Respectfully submitted on March 5, 2026.

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[3] 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); *D.V.D. v. DHS*, --- F. Supp. 3d ----, 2026 WL 521557 (D. Mass. Feb. 25, 2026) (final order, subject to a temporary stay), *appeal docketed*, No. 26-1212 (1st Cir. Feb. 28, 2026).

CERTIFICATE OF SERVICE

I certify that on March 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

Jessica A. Dawgert, Esq.
Counsel for Petitioner

s/Thomas A. Isler
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