IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01034-SBP

ATEF KHALED ATEF RASHAD MOHAMED,

Petitioner,

v.

JUAN BALTAZAR, Warden of Denver Contract Detention Facility;
GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement; and
TODD BLANCE, Acting U.S. Attorney General,[1]

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's March 13, 2026, Order, ECF No. 6, Respondents hereby respond to Petitioner's Application for a Writ of Habeas Corpus, ECF No. 2 (filed December 19, 2025) (the "Petition"). Petitioner is subject to a final order of removal. He asserts that his continued detention by Immigration and Customs Enforcement (ICE) violates 8 U.S.C. § 1231(a)(6) and its implementing regulations, as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001), and his procedural and substantive due process rights under the Fifth Amendment of the United States Constitution. ECF No. 2 at 19-28.

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[1] This filing amends the caption to identify the current Acting Attorney General, Todd Blanche, for Pamela Bondi, who was named in this lawsuit in her official capacity. Pursuant to Federal Rule of Civil Procedure 25(d), "[a]n action does not abate when a public officer who is a party in an official capacity . . . ceases to hold office." Rule 25(d) provides that, "[t]he officer's successor is automatically substituted as a party" and "[l]ater proceedings should be in the substituted party's name."

To date, Petitioner has been detained for approximately one year following issuance of his final order of removal. ECF No. 2-1. Petitioner seeks immediate release. *Id.* at 32.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is an Egyptian citizen. ECF No. 2 at 2. In October 2024, he entered the United States illegally at or near San Ysidro, California. ECF No. 2-1 at 4; Ex. 1 at ¶ 5 (Declaration of K. Benner). He was detained and placed in expedited removal proceedings. Ex. 1 at ¶ 6.

In October 2024, Petitioner claimed that he had a credible fear of persecution. *Id.* ¶ 10. ICE referred Petitioner to U.S. Citizenship and Immigration Services (USCIS), with whom Petitioner sought a credible fear interview. *Id.* ¶ 11. After an interview, USCIS determined that Petitioner did not establish a credible fear of persecution.[2] *Id.*

In December 2024, DHS issued Petitioner a Notice to Appear and began removal proceedings, charging Petitioner with being inadmissible to the United States. *Id.* ¶ 14. Petitioner appeared with counsel before the immigration judge in February 2025 and conceded inadmissibility. *Id.* ¶ 18.

In February 2025, Petitioner filed an application for asylum and withholding of removal. *Id.* ¶ 16.

On June 5, 2025, the immigration court held an evidentiary hearing, at which Petitioner conceded he was not eligible for asylum. *Id.* ¶ 19. However, Petitioner maintained his request for withholding of removal. *Id.*

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[2] In November 2024, the immigration judge vacated USCIS's determination that Petitioner had not established a fear of persecution. *Id.* ¶¶ 12-13. However, she later reversed this decision following an evidentiary hearing. *Id.* ¶ 19.

On June 18, 2025, an immigration judge entered an order of removal against Petitioner, but withheld removal to Egypt. *Id.* ¶ 20. The immigration judge reserved each party's right to appeal the decision, and when no party did within the 30-day period, the order became a final order of removal on July 18, 2025. *Id.* After 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.* ¶ 22.

In October 2025, ICE provided Petitioner with a notice of custody review, and on October 10, 2025, ICE conducted a review of Petitioner's custody status. *Id.* ¶¶ 24, 25. ICE determined that Petitioner did not satisfy the criteria for release and continued his detention. *Id.* ¶ 25. In November 2025, ICE conducted a personal interview with Petitioner, allowing him to provide information relevant to his custody. *Id.* ¶ 26.

In January 2026, ICE conducted a second post-order of removal custody review. *Id.* ¶ 27.

DHS is working with the Department of State to identify and evaluate a third country for Petitioner's removal, but has no more specific details to provide. *Id.* ¶ 28.

Petitioner, through counsel, filed his habeas petition in March 2026. *See generally* ECF No. 2. He contends that his continued detention violates 8 U.S.C. § 1231(a), and the Supreme Court's interpretation of that statute in *Zadvydas*, and his due process rights. *Id.* at 19-27. On March 13, 2026, the Court issued an order directing Petitioner to serve Respondents and, within 3 weeks of service, Respondents to show cause as to why the Petition should not be granted. *See* ECF No. 6.

ARGUMENT

Section 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 90-day removal period began on February 26, 2025. *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. *See* 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 further 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 final on June 18, 2025. *See* ECF No. 2 at 2, 8. Thus, the ninety-day removal period concluded on September 18, 2025. To date, Petitioner has been detained for approximately ten months since his removal order became final.

Petitioner asserts that he cannot be removed to his native country, Egypt, 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. 2 at 19-20.

At this time, Respondents do not have additional 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.

Dated: April 7, 2026

PETER MCNEILLY
United States Attorney

s/Leslie Schulze
Leslie Schulze
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0131
E-mail: leslie.schulze@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on April 7, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

Mario Nicolais
KBN Law, LLC
7838 W. Alameda Ave., Ste. 103-301
Lakewood, CO 80226
mario@kbnlaw.com
Counsel for Petitioner

s/Leslie Schulze
U.S. Attorney's Office