IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01108-SBP

SARMAD FADHIL MOHAMMED,

Petitioner,

v.

TODD M. LYONS,[1] Acting Director ICE,
GEORGE VALDEZ,[2] Acting Field Office Director Denver Office,
JUAN BALTAZAR, Warden,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 3)

In accordance with the Court's Order dated February 17, 2026, ECF No. 3, Respondents respond to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, ECF No. 1 (the Petition).

The Petition should be denied. After being admitted to the United States as a refugee, Petitioner was convicted of numerous crimes including sex assault and causing serious bodily injury, for which he was sentenced to twelve years to life in prison. Shortly after Petitioner was released on parole, U.S. Immigration and Customs Enforcement (ICE) officers took him into custody. In October 2025, an immigration judge (IJ) found Petitioner removable for having committed an aggravated felony and ordered his removal to his home country of Iraq. Petitioner did not contest

[1] The correct spelling of Mr. Lyons's name is reflected in this submission.
[2] George Valdez is now Acting Field Office director and is automatically substituted as a respondent under Fed. R. Civ. P. 25(d).

that finding, nor did he seek any relief from removal. The Iraqi consulate has indicated that Petitioner is set to receive a travel document to Iraq imminently, and he is tentatively scheduled for removal on May 7, 2026.

Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6), because Petitioner is "removable" under 8 U.S.C. § 1227, 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, which is reasonably foreseeable. Indeed, that removal is set to occur as soon as next week.

BACKGROUND

Petitioner is a native and citizen of Iraq. Resp'ts' Ex. 1, Decl. of Grace Miles ¶ 4. He was admitted to the United States as a refugee in 2008. *Id.* ¶ 5. Then, in June 2013, Petitioner was convicted in [redacted] District Court of six counts of sex assault with a mandatory sentence for a crime of violence causing death or serious bodily injury, one count of serving as an accessory to a crime, and one count of false reporting. *See id.* ¶ 6. He was sentenced to twelve years to life in prison with twenty years' parole. *Id.*

In August or September 2025, Petitioner was released on parole. *See id.* ¶ 7 (release in August 2025); ECF No. 1 at 2 (release in September 2025). On September 23, 2025, ICE took Petitioner into custody and detained him pending removal proceedings. Ex. 1 ¶ 8.

On October 7, 2025, the U.S. Department of Homeland Security (DHS) initiated removal proceedings against Petitioner by charging him with being removable under 8 U.S.C. § 1227(a)(2)(A)(iii) as a noncitizen who, at any time after admission, has been convicted of an

aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(F). *Id.* ¶ 10. On October 20, 2025, Petitioner admitted that charge and conceded his removability before an IJ. *Id.* ¶ 11. The IJ sustained the charge of removal, and Petitioner did not pursue any relief from removal. *Id.* The IJ ordered Petitioner removed to Iraq, and Petitioner waived his right to appeal. *Id.* Petitioner's removal order therefore became final at that time, and he has been detained pursuant to 8 U.S.C. § 1231 ever since. *Id.* ¶¶ 11-12.

Petitioner is now in custody awaiting removal. On December 3, 2025, ICE served Petitioner with a Notice of File Custody Review, which advised him that ICE would review his custody status and potential for release on an order of supervision. *Id.* ¶ 13. On January 12, 2026, ICE conducted a Post Order Custody Review under 8 C.F.R. § 241.4 and determined that Petitioner did not satisfy the criteria for release because he did not show that he would not pose a danger to the community or present a significant risk of flight. *Id.* ¶ 14. At the same time, Petitioner "advised ICE" that "he wants to return to Iraq." *Id.*

On April 13, 2026, the Iraqi consulate interviewed Petitioner. *Id.* ¶ 16. "At that time, the consulate advised that Petitioner's travel document w[ould] be issued in approximately 14 days." *Id.* In anticipation of receiving that travel document, Petitioner is tentatively scheduled for removal to Iraq this coming Thursday, May 7, 2026. *Id.* ¶ 17. Because of Petitioner's status as an aggravated felon and the anticipated imminent receipt of a travel document, if Petitioner is not able to be removed as scheduled on May 7, ICE intends to schedule him for a removal flight as soon as practicable thereafter. *Id.* ¶ 17.

ARGUMENT

I. Petitioner's detention is 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 ("[W]e 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 "removable under section 1227(a)(2)." As set forth above, Petitioner has been found to be removable under this provision. *See* Ex. 1 ¶¶ 10-11 (Notice to Appear issued to Petitioner charged him as removable under 8 U.S.C. §§ 1227(a)(2)(A)(iii), and noting Petitioner conceded removability as charged and IJ sustained the charge of removability).

Second, § 1231(a)(6) also authorizes the continued detention of any noncitizen who has been determined by the government to be "a risk to the community or unlikely to comply with the order of removal." This basis for continued detention applies to Petitioner too, because his post-order custody review concluded that he failed to show that he did not present a significant risk of flight given his final order or a danger to the community. *See* Ex. 1 ¶¶ 14-15 (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 removable, as well as those who have been determined to be a flight risk or a danger to the community.[3] And Petitioner fits both categories. Petitioner's detention does not violate the INA.

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[3] 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.

II. Petitioner's detention does not violate due process under the standards set in *Zadvydas* because he is set to be removed as soon as next week.

Petitioner argues that his removal violates due process under the standards set forth in *Zadvydas*. ECF No. 1 at 3. But this challenge fails because there is a significant likelihood that Petitioner will be removed in the imminent future.

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

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. Petitioner asserts that military conflict between the United States and Iran has "spilled into Iraq" and that "[t]ensions are still rising." ECF No. 1 at 3. He claims that "[e]ven if ICE has travel documents for [him], which they do not, [he] do[es] not see how it is possible for them to deport [him] back to Iraq when it is not safe and the airspace is closed." *Id.*

Even assuming this is sufficient to carry Petitioner's burden, Petitioner's facts are stale. As noted above, Petitioner has been interviewed by the Iraqi consulate, which estimated it would provide him a travel document by as soon as this week. *See* Ex. 1 ¶ 16 (April 13, 2026, consular

interview in which consulate estimated issuance of a travel document in approximately two weeks). Despite Petitioner's assertion that Iraqi airspace is closed, he is currently scheduled for a deportation flight next week. *Id.* ¶ 17. And given Petitioner's status as an aggravated felon with an executable final order of removal, even if Petitioner does not have a travel document in hand in time for that itinerary, ICE intends to arrange for a subsequent flight at the earliest practicable time. *Id.* In light of these facts, Petitioner has a significant likelihood of removal in the reasonably foreseeable future, and the Petition should be denied.[4]

CONCLUSION

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

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[4] 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. 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.

Dated: April 30, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 30, 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 recipients by e-mail:

none.

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

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s/ V. William Scarpato III
V. William Scarpato III