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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE WESTERN DISTRICT OF WASHINGTON**

12 **MAFOUZE DIALLO,**

13 *Petitioner,*

14 **v.**

15 **BRUCE SCOTT, et al.,**

16 *Respondents.*

)
) **Case No. 2:26-cv-00975-GJL**
)
)
) **PETITIONER'S REPLY IN**
) **SUPPORT OF PETITION FOR**
) **WRIT OF HABEAS CORPUS**
) **PURSUANT TO 28 U.S.C. § 2241**
)
)

17
18 **INTRODUCTION**

19
20 Petitioner Mafouze Diallo, by and through his undersigned counsel, respectfully submits
21 this reply to address Respondents' flawed Answer to Petitioner's Habeas Petition. While
22 Respondents attempt to rely on *Zadvydas*' six-month limit as blanket authorization to detain
23 Petitioner indefinitely,¹ Respondents fail to acknowledge that Petitioner's removal is not
24 reasonably foreseeable. For these reasons, as well as those discussed in Petitioner's initial filings,
25 Petitioner respectfully requests this Court expeditiously grant Petitioner's Habeas Petition.

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¹ Petitioner is not challenging pre-removal detention *per se*, as Respondents suggest. *See* Resp'ts' Br., ECF No. 7 at 4-7. Petitioner is underscoring the ongoing and irreparable injury his lengthy, unlawful detention has caused.

LEGAL ANALYSIS

I. FOLLOWING THE 90-DAY REMOVAL PERIOD, SECTION 1231 NO LONGER PERMITS MANDATORY DETENTION WHERE REMOVAL IS NOT REASONABLY FORESEEABLE

As a threshold matter, the government argues that the Petitioner has not met the initial requirement of showing a “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But the record does not support Respondents’ argument.

The statute commends that a noncitizen who “does not leave or is not removed within the removal period . . . shall be subject to supervision under regulations prescribed by the Attorney General” pending removal. 8 U.S.C. § 1231(a)(3); *Vishal v. Chestnut*, 811 F. Supp. 3d 1179, 1186 (E.D. Cal. 2025). *See, e.g., Gomez v. Mattos*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at *7 (D. Nev. Nov. 6, 2025) (ordering release under section 1231(a)(3)). While Congress enumerated three narrow sections in which Section 1231 detention may be extended beyond the 90-day removal period, none of these circumstances apply to Petitioner. *See* 8 U.S.C. § 1231(a)(1)(c), (c)(2)(A), and (a)(6). *See also Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021). A critical caveat the government fails to acknowledge.

Nonetheless, even under *Zadvydas*, only a showing of “good reason,” not certainty, is required. A showing Petitioner has met. Because the Immigration Judge granted withholding of removal to Senegal, the designated country of removal, DHS is legally barred from removing Petitioner to his country of origin. Thus, following the final order on December 22, 2025, the government had 90-days to identify a third country that would accept Petitioner and effectuate his removal. Pet’r’s Pet. But at the close of the 90-day removal period, DHS had not identified a third country that Petitioner could be removed to. *See* Resp’ts’ Br., ECF No. 7 at 7 (admitting that a third country was not designated at the 90-day mark). And before this Court, Respondents admit

1 that they are no closer to removing Petitioner than they were on either the date his removal order
2 became final, or the date his 90-day removal period expired.

3 **II. THE GOVERNMENT'S GENERALIZATIONS ARE LEGALLY** 4 **INSUFFICIENT TO REBUT PETITIONER'S SHOWING UNDER ZADVYDAS**

5 Once Petitioner met his initial burden, the obligation shifted to the government to “respond
6 with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701. But Respondents offer
7 no concrete, individualized evidence to rebut Petitioner’s showing. Rather, their entire evidentiary
8 showing of foreseeable removability consists of a single sentence from the declaration of
9 Deportation Officer Karl Douglas, which states, “At this time, ERO is continuing to pursue other
10 options for third country removal.” Officer Douglas Decl., at 3 ¶ 14. That assertion, which is a
11 generalization—not evidence, is the precise type of unsupported claim courts in this circuit have
12 repeatedly rejected. *Vishal v. Chestnut*, 811 F. Supp. 3d 1179, 1184-85 (E.D. Cal. 2025). It
13 identifies no country, diplomatic communication, travel document application, agreement with any
14 foreign government, or projected timeline whatsoever. *See* Resp’ts’ Br., ECF No. 7 at 8 (making
15 a general assertion that “ERO intends and continues to pursue other options for Petitioner’s third
16 country removal”).

17 The government’s reliance on the Ghana notice does not rescue its position. ERO served
18 Petitioner a notice of removal to Ghana on March 26, 2026, *after* his 90-day removal period had
19 expired, and *after* Petitioner filed the instant habeas petition. *Nguyen v. Scott*, 796 F. Supp. 3d 703,
20 722 (W.D. Wash. 2025) (finding removal not reasonably foreseeable where “ICE did not even
21 request that Vietnam issue him a travel document until after he filed a habeas petition”). Shortly
22 thereafter, on April 2, 2026, USCIS issued a positive fear determination concerning Petitioner’s
23 removal to Ghana. The Ghana option has therefore been formally foreclosed, and the government
24 offers no replacement. The government’s assertion that ICE “continues” to pursue further third-

1 country options without identifying any concrete actions or evidence does not—and cannot—
2 establish that removal is significantly likely in the reasonably foreseeable future. Resp’ts’ Br. at 8.
3 Particularly when “[c]ourts in this circuit have regularly refused to find Respondents’ burden met
4 where Respondents have offered little more than generalizations regarding the likelihood that
5 removal will occur.” *Vishal*, 811 F. Supp. 3d at 1184–85 (E.D. Cal. 2025) (citing *Nguyen v. Scott*,
6 796 F.Supp.3d 703, 725 (W.D. Wash. 2025). See also *Chun Yat Ma v. Asher*, No. C11-1797 MJP,
7 2012 WL 1432229, at *4–5 (W.D. Wash. Apr. 25, 2012), *Hoac v. Becerra*, No. 2:25-cv-01740-
8 DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)).

9 To be certain, the government’s argument that Petitioner’s detention remains within the
10 six-month presumptive period and is therefore lawful conflates the *Zadvydas* presumption with an
11 automatic entitlement to detain. Resp’ts’ Br. at 6. “*Zadvydas* establishes a ‘presumption’ of
12 unreasonableness after six months; it does not prevent a noncitizen from challenging their
13 detention earlier where removal is demonstrably not foreseeable.” *Movsesyan v. Bondi, et al.*, No.
14 5:26-CV-00875-MBK, 2026 WL 712824, at *4 (C.D. Cal. Mar. 9, 2026) (citing *Munoz-Saucedo*
15 *v. Pittman*, 789 F. Supp. 3d 387, 395-96 (D.N.J. 2025) (“Although the Supreme Court established
16 a six-month period of presumptively reasonable detention, it did not preclude a detainee from
17 challenging the reasonableness of his detention before such time”)). Indeed, “[t]he six-month
18 benchmark is a presumptively reasonable period of detention adopted for the sake of uniform
19 administration, not a rigid prerequisite.” See *Minassi v. Noem, et al.*, No. 5:26-CV-00723-RGK-
20 AYP, 2026 WL 923289, at *3 (C.D. Cal. Apr. 1, 2026) (citation modified). Put simply, it is not a
21 blank check to detain while pursuing speculative removal options.²

22
23 ² The government’s reliance on *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) does not
24 alter this conclusion. That reasoning would permit continued detention based on speculative,
sequential attempts at third-country removal without any realistic prospect of success. That is

As the post-removal confinement grows, “what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701. With no viable country identified and no removal horizon in sight, the government cannot satisfy its rebuttal burden through speculation alone. Accordingly, continued detention is no longer authorized under *Zadvydas*.

III. THE GOVERNMENT’S FAILURE TO CONDUCT THE REQUIRED POCR REVIEW IS AN INDEPENDENT BASIS FOR RELIEF, AND ITS JUSTIFICATION FOR THAT FAILURE IS LEGALLY UNTENABLE

To make matters worse, Petitioner is entitled to a post-order custody review (“POCR”) under 8 C.F.R. section 241.4(k)(1)(i) prior to the expiration of the removal period to determine whether release under supervision is warranted or continued detention is justified. Yet as Respondents admit, the 90-day removal period started and ended without any POCR. Resp’ts’ Br. at 8; 8 C.F.R. § 241.4(k)(1)(i). Its sole justification being that ERO “believed” removal to a third country was significantly likely in the reasonably foreseeable future and further argues that “ERO believed – and it is reasonable that ERO continues to believe – that there was a significant likelihood of Petitioner’s removal to a third country.” Resp’ts’ Br. at 8. But Respondents’ explanation is insufficient both as a matter of law and on the facts presented. In fact, Respondents’ explanation provides Petitioner with yet another concrete and objective basis to believe for “good reason” that removal was not significantly likely in the reasonably foreseeable future.

The plain text of section 241.4(k)(1)(i) imposes an unambiguous mandate: “Prior to the expiration of the removal period, the district director or Director of the Detention and Removal Field Office shall conduct a custody review” for any noncitizen whose removal “cannot be

incompatible with *Zadvydas*, which requires a demonstrable likelihood of removal, not indefinite efforts without results. Petitioner’s removal to Senegal is legally barred. Petitioner’s removal to Ghana has been foreclosed by a positive fear determination. The government offers no third option. That sequence is, functionally, the situation *Zadvydas* identified as warranting relief.

1 accomplished during the [removal] period, or is impracticable or contrary to the public interest.”
2 8 C.F.R. § 241.4(k)(1)(i) (emphasis added). The word “shall” is not permissive. *Kingdomware*
3 *Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016) (“Unlike the word “may,” which implies
4 discretion, the word “shall” usually connotes a requirement.” It does not authorize ERO to
5 substitute its own informal opinion for the required regulatory review or to bypass that review
6 based on a general belief that, despite no country being identified, removal may occur.

7 The regulation also establishes the timing of the custody review, requiring that it occur
8 prior to the expiration of the removal period to determine whether the noncitizen should be
9 released under supervision or whether continued detention is justified. *Accardi* requires not only
10 adherence to agency regulations, but the exercise of the discretion those regulations mandate. *See*
11 *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Where the government
12 fails to follow that regulatory process, any resulting detention lacks a valid legal foundation. *See*
13 *Sering Ceesay v. Kurzdorfer*, No. 25-cv-00267-LJV, 2025 WL 1284720, at *21 (W.D. N.Y. May
14 2, 2025) (finding petitioner was not afforded even minimal due process protections when ICE
15 failed to provide petitioner an informal interview upon his re-detainment).

16 This requirement implements constitutional due process protections against arbitrary and
17 prolonged detention. Where, as here, a regulation is promulgated to protect a fundamental liberty
18 interest, the government’s failure to comply with that regulation has substantive legal
19 consequences. “[W]hen a regulation is promulgated to protect a fundamental right derived from
20 the Constitution or a federal statute, and [the government] fails to adhere to it, the challenged
21 deportation proceeding is invalid.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
22 1993771, at *5 (E.D. Cal. July 16, 2025).

23 The government’s own timeline, however, exposes its failure to adhere to its own
24

1 regulatory commands. The immigration judge issued an order withholding removal on November
 2 20, 2025, and the order became administratively final on December 22, 2025. From that moment,
 3 the government knew with certainty that it could not remove Petitioner to Senegal because of the
 4 extensive persecution he received, and it had either (a) 90 days to either effectuate removal to a
 5 third country or (b) conduct the mandatory POOR. Despite this knowledge, the 90-day period
 6 expired with no government action.

7 Only after the removal period had expired, after the government failed to conduct a POOR,
 8 and after Petitioner filed this habeas petition, did ERO serve a notice of removal to Ghana on
 9 March 26, 2026. But that effort failed within days following a positive USCIS fear determination.
 10 The government's reliance on this belated and unsuccessful attempt therefore does not demonstrate
 11 diligence; rather, it confirms the absence of any meaningful effort to (a) adhere to its own
 12 regulations, or (b) effectuate removal during the 90-day period when such action was required. 8
 13 U.S.C. § 1231(a)(1)(A).

14 Where, as here, the government fails to comply with a regulation designed to protect a
 15 fundamental liberty interest, the resulting detention cannot stand. DHS was not free to substitute
 16 its internal belief regarding the likelihood of removal for the required regulatory process. And it's
 17 admitted violation of binding regulatory law and renders Petitioner's continued detention
 18 unlawful.³

19
 20 ³ The government's contention that this Court lacks jurisdiction under 8 U.S.C. § 1252(g) is based
 21 on a misinterpretation of both Petitioner's argument and the statute itself. Petitioner seeks release
 22 on supervision under section 1231(a)(3), a form of relief that *Zadvydas* and the statute expressly
 23 contemplate. *See Zadvydas*, 533 U.S. at 696–700. Petitioner challenges the lawfulness of continued
 24 detention and the government's failure to perform a mandatory, regulatory duty, over which it
 exercised no discretion. Petitioner does not seek to reopen removal proceedings but instead
 requests relief squarely within the scope of habeas jurisdiction. *Burnett v. Lampert*, 432 F.3d 996,
 999 (9th Cir. 2005) (“Federal courts have a fair amount of flexibility in fashioning specific
 habeas relief.”). The Court need not direct the Executive's removal decisions or reopen any

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his initial Petition for Habeas Corpus and afford the relief requested therein.

Respectfully submitted on this 13th day of April 2026.

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proceeding to grant this relief.

CERTIFICATE OF COMPLIANCE

Pursuant to LCR 7(e), I certify that this Reply to Respondents' Response to Habeas Corpus Complaint contains 2,096 words. In compliance with the Local Civil Rules, counsel relied on the word count of a word processing system used to prepare the brief.

DATED: April 13, 2026

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CERTIFICATE OF SERVICE

I, Clayton Cook-Mowery, counsel for Petitioner, do hereby certify that on the 13th day of April 2026, I served the foregoing Reply in Support of Petitioner's Habeas Corpus Petition upon Respondents by Electronic Filing via the CM/ECF system.

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