Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDI OSMAN SHIRDOON, Petitioner, v. TODD BLANCHE, *et al.*,[1] Respondents.	Case No. 2:26-cv-01150-GJL FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for consideration: April 27, 2026

I. INTRODUCTION

Petitioner is a native and citizen of Somalia who is subject to a final order of removal as of September 16, 2025. *See* Dkt. 1 ("Pet."). U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner under 8 U.S.C. § 1231(a)(6). While the immigration court has granted Petitioner withholding of removal to Somalia, ICE is reviewing whether third country removal is available. Petitioner challenges his continued post-order detention at the Northwest ICE Processing Center ("NWIPC") while he awaits removal from the United States.

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the 90-day removal period if necessary to effectuate removal. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has construed this provision to authorize detention only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court has identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the

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period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's post-order detention could raise constitutional issues. *Id.*

Beyond six months, continued detention is permissible so long as there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701; *see also Clark v. Martinez*, 543 U.S. 371, 378 (2005) (extending *Zadvydas* to inadmissible noncitizens). The "reasonably foreseeable future" is evaluated based on concrete evidence of progress, such as diplomatic communications, travel document requests, or interviews with the home country. *Zadvydas*, 533 U.S. at 701. The noncitizen bears the initial burden to show "good reason" that removal is unlikely, after which the government must rebut with evidence of likely removal. *Id.*

If it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, DHS may release noncitizens on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13 and 241.4(l).

B. Third Country Removal

The INA and implementing regulations set forth the process for determining the country of removal. *See* 8 U.S.C. §§ 1231(b)(2)(C)-(E); 8 C.F.R. § 1240.10(f); *see also Jama v. ICE*, 543 U.S. 335, 341 (2005). A noncitizen may be removed to (in order of priority): (1) a country designated by the noncitizen; (2) a country where the noncitizen is a subject, national, or citizen; or (3) a country where the noncitizen has a lesser connection. 8 U.S.C. § 1231(b)(2). If these options are "impracticable, inadvisable, or impossible," the noncitizen may be removed "to

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another country whose government will accept" him. *Id.* at § 1231(b)(2)(E)(vii); *Jama*, 543 U.S. at 341.[2]

C. Petitioner Abdi Osman Shirdoon

Petitioner is a native and citizen of Somalia who unlawfully entered the United States on or about January 22, 2025, at or near Lukeville, Arizona. *See* Declaration of Barbara Andrade ("Andrade Decl."), Ex. B at 3 (Form I-213). Although Petitioner was initially processed for expedited removal, Petitioner's expedited order of removal was vacated upon issuance of his Notice to Appear ("NTA"). Andrade Decl., Ex. C (NTA); Andron Decl., ¶ 6.

On June 18, 2025, DHS determined that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) of the INA and issued him an NTA. *See* Declaration of Deportation Officer Robert Andron, Jr. ("Andron Decl."), ¶ 7; Andrade Decl., Ex. C.

On September 16, 2025, Petitioner appeared for a hearing on the merits of his applications for relief from removal. Andron Decl., ¶ 8; Andrade Decl., Ex. D (Order of the Immigration Judge). The immigration judge ordered Petitioner removed to Somalia but granted Petitioner's application for withholding of removal under the INA. Andron Decl., ¶ 8; Andrade Decl., Ex. D. Both parties waived appeal of the immigration judge's decision. Andron Decl., ¶ 8; Andrade Decl., Ex. D. Accordingly, Petitioner's removal order became final on the date it was issued.

Following the entry of his removal order, ERO began efforts to identify a third country for Petitioner's removal. Andron Decl., ¶ 9. On November 21, 2025, ERO interviewed Petitioner regarding any ties he may have to a third country; Petitioner stated he has no friends or family in

[2] The Government is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the Government cannot remove a person to a country where they would be tortured, a form of protection known as protection under the Convention Against Torture ("CAT"). *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16-1208.18.

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any other country in the world. *Id.* On December 9, 2025, ERO again interviewed Petitioner regarding third country removal options; Petitioner indicated he has no other country to go to. Andron Decl., ¶ 10. On February 17, 2026, ERO served Petitioner with a Form I-229(a), Warning for Failure to Depart, due to his refusal to cooperate with ICE's requests to assist in identifying a potential third country for his removal. Andron Decl., ¶ 11. On April 6, 2026, ICE again served Petitioner with Form I-229(a). Andron Decl., ¶ 12.

ICE intends to continue pursing third country removal and will work with the consulate of the country that accepts Petitioner to obtain a proper travel document. Andron Decl., ¶ 13. Upon identifying a third country for Petitioner's removal, ICE will notify Petitioner of the anticipated third country and will provide him with an opportunity to raise a fear-based claim to whatever third country is designated for removal. Andron Decl., ¶ 14.

III. LEGAL STANDARD

"The district courts of the United States … are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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IV. ARGUMENT

A. Petitioner is Detained Pursuant to 8 U.S.C. § 1231(a)(6)

Under *Zadvydas*, post-order detention is presumptively lawful for six months. *Zadvydas*, 533 U.S. at 701. After this period, Petitioner bears the burden to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Only then does the burden shift to the Government to demonstrate that removal remains reasonably foreseeable. *Id.*

Federal Respondents acknowledge that the presumptively reasonable six-month removal period has lapsed in the instant case. Petitioner's removal order became final on September 16, 2025, upon his waiver of appeal. Andrade Decl., Ex. D (Order of the Immigration Judge); 8 C.F.R. § 1241.1(b). As Petitioner has remained in ICE custody, the presumptively reasonable post-order period of detention expired on or about March 16, 2026.

However, Petitioner's removal has been frustrated, and his detention prolonged, due in part to his own actions. *See Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003); Andron Decl., Ex. ¶¶ 9-12. Petitioner's ongoing refusal to assist in identifying potential third countries for removal is at least part of the reason he remains in detention. The post-order removal period should therefore be extended until Petitioner complies with his statutory obligations to cooperate in the removal process. 8 U.S.C. § 1231(a)(1)(C). Once he has complied, ICE "shall have a reasonable period of time in order to affect the [noncitizen's] removal." 8 C.F.R. § 241.4(g)(1)(ii).

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court deny the Petition.

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DATED this 21st day of April, 2026.

Respectfully submitted,

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I certify that this memorandum contains 1,500 words, in compliance with the Local Civil Rules.