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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DAGIM TARIKU KENEA,

Petitioner,

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13 v.
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15 WARDEN JEREMY CASEY, et al.,

16 Respondents.
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Case No.: 26-cv-02675-JO-MSB

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner requests this Court to order Immigration and Customs Enforcement (ICE) to release him from custody because, he alleges, his detention is unlawful and prolonged. He was ordered removed from the United States on November 12, 2025, and granted withholding of removal to Ethiopia that same day. Petitioner appealed this decision, and on January 20, 2026, the Board of Immigration Appeal (BIA) dismissed Petitioner's appeal, making his removal order administratively final. Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. Although he may not be repatriated to Ethiopia, he may be resettled in a third country. Under 8 U.S.C. § 1231(a), ICE has authority to detain a noncitizen for 90 days to execute removal, and the Supreme Court has held that detention is presumptively reasonable for six months. Here, the presumptively reasonable six-month period of post-final order detention has not ended. ICE is actively working to effect Petitioner's removal to a third country. Petitioner has not provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. As such, the Court should deny the petition.

II. BACKGROUND

Petitioner is a native and citizen of Ethiopia, who unlawfully entered the United States on January 25, 2025, and was apprehended by U.S. Border Patrol near Tecate, California. *See* Declaration of Adrian Gonzalez. ("Gonzalez Decl.") at ¶¶ 5–6; *see also* Exhibit 1 (Notice to Appear). Petitioner was thereafter processed for expedited removal under 8 U.S.C. § 1225(b)(1) and booked into ICE custody for removal. *See* Gonzalez Decl. at ¶¶ 6–7. Petitioner made a claim for relief under the Convention Against Torture ("CAT") and was referred to an asylum officer for a CAT assessment. *See id.* at ¶ 8.

On May 5, 2025, an asylum officer found that Petitioner had established more likely than not that he would be tortured in Ethiopia. *See* Gonzalez Decl. at ¶ 9. On May 6, 2025, Enforcement and Removal Operations (ERO) issued the Petitioner a Notice to Appear ("NTA") charging him with entering the United States without inspection. *See*

1 *id.* at ¶ 10; *see also* Exhibit 1. On November 12, 2025, the Immigration Judge (IJ) denied
2 Petitioner asylum but granted him withholding of removal under INA § 241(b)(3). *See*
3 Gonzalez Decl. at ¶ 11; *see also* Exhibit 2 (IJ Removal Order). Petitioner appealed the
4 decision with the BIA. *See* Gonzalez Decl. at ¶ 12; *see also* Exhibit 3 (BIA Decision).
5 On January 20, 2026, the BIA summarily dismissed the appeal since it was not timely
6 filed, making Petitioner's removal order administratively final. *See* Gonzalez Decl. at ¶
7 13; *see also* Exhibit 3. There is currently nothing pending in the 9th circuit regarding
8 the Petitioner. *See* Gonzalez Decl. at ¶ 14.

9 On December 26, 2025, ERO emailed Removal and International Operations
10 (RIO) to assist with 3rd country removal. *See* Gonzalez Decl. at ¶ 15. On January 3,
11 2026, HQ RIO responded that they are actively working with the Department of State
12 and DHS on avenues to remove Petitioner to a third country. *See id.* at ¶ 16. HQ RIO –
13 Africa is tracking this case for third country removal. *See id.* On February 22, 2026,
14 ERO spoke to Petitioner and inquired as to whether he would be willing to go to another
15 country other than Ethiopia. *See id.* at ¶ 18. Petitioner refused to disclose any other
16 country for removal besides Ethiopia. *See id.* Petitioner stated that if he cannot stay in
17 the United States, then he wishes to be returned to Ethiopia. *See id.* On March 9, 2026,
18 ERO sent an email request for status on third country removal. *See id.* at ¶ 19. On March
19 17, 2026, ERO sent follow up email to place the Petitioner on the list for 3rd country
20 removal. *See id.* at ¶ 20. On May 6, 2026, ERO sent follow up email for updates on
21 placing the Petitioner on third country removal list. *See id.* at ¶ 21. At this time, ERO,
22 with the support of HQ-RIO, continues to diligently seek to identify a third country for
23 Petitioner's removal and believes there is a significant likelihood of removal in the
24 reasonably foreseeable future. *See id.* at ¶ 22.

25 When a third country is identified for resettlement, standard ICE guidance and
26 procedures provide that an ICE ERO officer will provide written notice to the removable
27 alien of the intended third country removal. *See* Gonzalez Decl. at ¶ 23. The written
28 notice identifies which country ICE intends to remove the alien to. *See id.* ICE will

generally wait at least 24 hours following service of the Notice of Removal before executing removal. *See id.* In exigent circumstances, ERO may execute a removal order six or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal. *See id.* Once ERO identifies a third country for removal, he will be notified in writing of the third country at least 24 hours prior to removal. *See id.* at ¶ 24. If Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claim. *See id.*

III. ARGUMENT

“Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 90 days pending the government’s efforts to secure the alien’s removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien during the 90-day removal period under subsection (a)(1)).

Section 1231(a)(6) “authorizes further detention if the Government fails to remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Detention authority under this statute, however, is limited to “a period reasonably necessary to bring about the alien’s removal from the United States” and “does not permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month period unless “there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

If an individual ordered removed “is not removed to his or her country of choice or citizenship, he or she shall be removed to any of the following countries” listed in 8 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).

1 The enumerated countries are:

- 2 (i) The country from which the alien was admitted to the United States
- 3 (ii) The country in which is located the foreign port from which the alien
4 left for the United States or for a foreign territory contiguous to the United
5 States.
- 6 (iii) A country in which the alien resided before the alien entered the
7 country from which the alien entered the United States.
- 8 (iv) The country in which the alien was born.
- 9 (v) The country that had sovereignty over the alien's birthplace when the
alien was born.
- (vi) The country in which the alien's birthplace is located when the alien
is ordered removed.

10 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
11 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
12 country whose government will accept the alien into that country.’” *Id.* (quoting
13 § 1231(b)(2)(E)(vii)).

14 Here, Petitioner was granted withholding of removal to Ethiopia—his country of
15 birth and citizenship, as well as the country designated during his removal proceedings.
16 Petitioner has not designated any other country for removal. Apart from Ethiopia, there
17 appears to be no other country that would meet the definitions under subsections (i)
18 through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v.*
19 *Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15,
20 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in violation
21 of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C.
22 § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is
23 “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to a third
24 country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

25 Since Petitioner’s removal order became final on January 20, 2026, ICE has
26 worked as expeditiously as possible to effectuate his resettlement in a third country. *See*
27 *id.* at ¶¶ 15-22. On December 26, 2025, ERO emailed Removal and International
28 Operations (RIO) to assist with 3rd country removal. *See* Gonzalez Decl. at ¶ 15. On

1 January 3, 2026, HQ RIO responded that they are actively working with the Department
2 of State and DHS on avenues to remove Petitioner to a third country. *See id.* at ¶ 16.
3 HQ RIO – Africa is tracking this case for third country removal. *See id.* On February
4 22, 2026, ERO spoke to Petitioner and inquired as to whether he would be willing to go
5 to another country other than Ethiopia. *See id.* at ¶ 18. Petitioner refused to disclose any
6 other country for removal besides Ethiopia. *See id.* Petitioner stated that if he cannot
7 stay in the United States, then he wishes to be returned to Ethiopia. *See id.* On March
8 9, 2026, ERO sent an email request for status on third country removal. *See id.* at ¶ 19.
9 On March 17, 2026, ERO sent follow up email to place the Petitioner on the list for 3rd
10 country removal. *See id.* at ¶ 20. On May 6, 2026, ERO sent follow up email for updates
11 on placing the Petitioner on third country removal list. *See id.* at ¶ 21. At this time, ERO,
12 with the support of HQ-RIO, continues to diligently seek to identify a third country for
13 Petitioner’s removal and believes there is a significant likelihood of removal in the
14 reasonably foreseeable future. *See id.* at ¶ 22; *see also Zadvydas*, 533 U.S. at 700
15 (instructing district courts “to listen with care when the Government’s foreign policy
16 judgments, including, for example, the status of repatriation negotiations, are at issue,
17 and to grant the Government appropriate leeway when its judgments rest upon foreign
18 policy expertise.”).

19 Petitioner’s removal order became final on January 20, 2026. He has been in
20 post-final order detention for less than four months. By the time of the May 14, 2026,
21 hearing on the petition, Petitioner’s detention will still be within the six-month period
22 that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*, 533 U.S. at 700–
23 01. Instructive here, the Supreme Court established this six-month period of post-final
24 order detention to be presumptively reasonable “for the sake of uniform administration
25 in the federal courts” and “to limit the occasions when courts will need to make”
26 difficult judgments involving foreign policy matters. *See id.* at 700–01. Thus,
27 Petitioner’s claim is not ripe for review, and it would be premature to conclude that
28 there is no significant likelihood of removal in the reasonably foreseeable future before

1 permitting ICE an opportunity to complete its diligent efforts to effect Petitioner's
2 removal. *See Khalilova v. Smith*, No. 25-cv-2140 JLS-DDL, 2025 WL 3089522, at *4
3 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the six-month period of presumptive
4 reasonableness has not passed, Petitioner’s claim is not ripe for review[.]”); *Ao v. Noem*
5 *et al.*, No. 25-cv-03256-BAS-VET, 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025)
6 (same). Evidence of progress, even slow progress, in negotiating a petitioner’s
7 repatriation will satisfy *Zadvydas* until the petitioner’s detention grows unreasonably
8 lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5
9 (S.D. Cal. Aug. 15, 2019) (“The record at this stage in the litigation does not support a
10 finding that there is no significant likelihood of Petitioner’s removal in the reasonably
11 foreseeable future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL
12 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because “Respondents have
13 set forth evidence that demonstrates progress and the reasons for the delay in
14 Petitioner’s removal”).

15 Should the Court decline to dismiss the petition at this time, the burden is on
16 Petitioner to show a “good reason to believe that there is no significant likelihood of
17 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. As explained
18 above, given the Executive’s negotiations with other countries for third country
19 resettlement and ERO’s pending request for such resettlement for Petitioner, he cannot
20 meet his burden, and even if he did, the government has presented evidence sufficient
21 to rebut the showing.

22 To the extent Petitioner asserts claims regarding conditions of his confinement,
23 ECF No. 1 at 5, the Court lacks jurisdiction over such claims because they do not
24 challenge the lawfulness of her custody. An individual may seek habeas relief under 28
25 U.S.C. § 2241 if she is “in custody” under federal authority “in violation of the
26 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas
27 relief is available to challenge only the legality or duration of confinement. *Pinson v.*
28 *Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th

1 Cir. 1979); *Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The
 2 writ of habeas corpus historically “provide[s] a means of contesting the lawfulness of
 3 restraint and securing release.”). The Ninth Circuit squarely explained how to decide
 4 whether a claim sounds in habeas jurisdiction: “[O]ur review of the history and purpose
 5 of habeas leads us to conclude the relevant question is whether, based on the allegations
 6 in the petition, release is *legally required* irrespective of the relief requested.” *Pinson*,
 7 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934
 8 (9th Cir. 2016) (The key inquiry is whether success on the petitioner’s claim would
 9 “necessarily lead to immediate or speedier release.”). Here, Petitioner’s claims
 10 regarding the conditions of her confinement do not arise under § 2241. *See Nettles*, 830
 11 F.3d at 933 (“We have long held that prisoners may not challenge mere conditions of
 12 confinement in habeas corpus.”); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025
 13 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
 14 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
 15 attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065);
 16 *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1 (S.D. Cal.
 17 Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241 because they were
 18 not arguing they were unlawfully in custody and receiving the requested relief would
 19 not entitle them to release). Thus, Petitioner’s claims do not arise under § 2241 and the
 20 petition should be dismissed.

21 IV. CONCLUSION

22 For the reasons stated herein, Respondents respectfully request that the Court
 23 deny the habeas petition.

24 DATED: May 6, 2026

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 27 Special Assistant United States Attorney

28 Attorneys for Respondents