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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AWET KIBROM MICHAEL,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of Department of Homeland Security; *et al.*,

Respondents.

Case No.: 26-cv-02867-JLS-JLB

RESPONSE IN OPPOSITION TO AMENDED HABEAS PETITION

I. INTRODUCTION

Awet Kibrom Michael ("Petitioner") has filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order his immediate release from custody. However, Petitioner's request is not ripe for review. Respondents therefore request the Court deny the habeas petition.

II. BACKGROUND

Petitioner is a citizen and national of Eritrea. *See* ECF No. 1 at 3; Exhibit 1 (Form I-213).[1] Petitioner originally entered the United States on or about December 29, 2024

[1]The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel. Other facts have been obtained from ICE counsel.

near the Calexico, California port of entry. *See id.* Petitioner was subsequently issued a Notice to Appear (NTA) under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States who has not been admitted or paroled and released on his own recognizance. *See* Exhibit 2 (Notice to Appear). Since that time, removal proceedings were initiated against Petitioner, pursuant to 8 U.S.C. § 1229a.

On April 25, 2025, Petitioner filed asylum applications for relief from withholding. *See* Exhibit 3 (Decision and Order of the Immigration Judge). Petitioner's merits hearings took place between August 8, 2025 and October 9, 2025. *See id.* On December 15, 2025, an immigration judge denied all Petitioner's applications for relief and ordered Petitioner removed to Eritrea, or in the alternative, Greece, where Petitioner has legal refugee status. *See id.* In reaching that decision, the immigration judge found Petitioner not credible and that Petitioner "repeatedly[,] knowingly and intentionally lied to the asylum office to circumvent the credible fear interview." *Id.* at p. 4. The immigration judge also noted Petitioner "did not express remorse for his dishonesty." *Id.* at p. 5. In addition to Petitioner's credibility issues, Petitioner presented inconsistent testimony regarding the alleged harm he was subjected to in Eritrea. *See id.* at pp. 8-13. Finally, the immigration judge rejected Petitioner's assertion that he did not have a valid travel document to enter in remain in Greece. *See id.* at p. 6. In fact, the Department of Homeland Security (DHS) presented evidence showing Petitioner had a valid "Hellas (Greek) Travel Document and Residence Permit" and that Petitioner was granted legal status as "Beneficiary of International Protection (Refugee)" in Greece. *Id.* at 7.

On January 14, 2026, the appeal period expired for both parties to appeal the removal order to the Board of Immigration Appeals (BIA). *See* Exhibit 3 at p. 14. As such, the removal order became administratively final on that date. Since then, Immigration and Customs Enforcement (ICE) has requested a travel document for Eritrea and is determining whether Petitioner can be alternatively removed to Greece.

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III. ARGUMENT

A. Petitioner's Detention is Lawful and He Has Not Established That There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

Petitioner's petition should be denied because he is properly detained under 8 U.S.C. § 1231(a). Since January 14, 2026, the date the removal order became administratively final, Respondents have been working on acquiring the necessary travel document in order to effectuate Petitioner's removal to Eritrea. Petitioner has not met his burden of rebutting the presumptively reasonable period of detention.

"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).

The enumerated countries are:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (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.

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

Here, Petitioner was ordered removed to Eritrea—his country of birth and citizenship. In the alternative Petitioner was ordered removed to Greece, where he has legal refugee status. Apart from Eritrea and Greece, there appears to be no other country that would meet the definitions under subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears the burden of demonstrating that 'he is in custody in violation of the Constitution or laws or treaties of the United States.'") (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is "impracticable, inadvisable, or impossible," ICE may remove Petitioner to a third country that will accept Petitioner's removal. 8 U.S.C. § 1231(b)(2)(E)(vii). As previously stated, ICE is determining whether Petitioner can return to Greece, the third county an immigration court found Petitioner was firmly resettled at, despite Petitioner's testimony to the contrary. *See* Exhibit 3.

As illustrated in various habeas filings in this district, recent developments in

international relations between the United States and several other countries have made probable ICE's removal of immigrants, like Petitioner, that it previously was unable to remove to third countries. *See, e.g.*, *Varona v. Noem et al.*, 25-cv-3328-JES-SBC, ECF No. 1 at 6 (S.D. Cal. Nov. 26, 2025) ("The Trump administration reportedly has negotiated with at least 58 countries to accept deportees from other nations."). Against this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to detain Petitioner for purposes of executing his removal order to Eritrea or Greece.

Here, Petitioner incorrectly asserts *Zadvydas* grace period expires on June 15, 2026. ECF No. 1 at 5. However, Petitioner's removal order became final on January 14, 2026, when both Petitioner and the government opted not to appeal the immigration judge's decision. *See* Exhibit 3; 8 C.F.R. § 1241.1. Petitioner has thus been in post-final order detention, under 8 U.S.C. § 1231(a), for only four months, which is well within the six months of post-removal confinement that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*, 533 U.S. at 700–01. This means that Petitioner's claim of prolonged detention would not be ripe until, at the earliest, July 14, 2026. *See id.* Moreover, since Petitioner's removal order became final, ICE requested a travel document in order to remove Petitioner to Eritrea, and is determining whether Petitioner can be removed to Greece, where he has legal refugee status. Therefore, ICE is working diligently to effect Petitioner's removal. *See also Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.").

On this record, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its diligent efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably

lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of commencing proceedings, adjudicating cases, and executing removal orders—which represent the initiation or prosecution of various stages in the deportation process.") (simplified); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

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IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the relief requested in the petition.

DATED: May 14, 2026

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s/ Camille Savedra
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